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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 537

FASHION ORIGINATORS' GUILD OF AMERICA, INC., ET AL., PETITIONERS,

vs.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 31, 1940.

CERTIORARI GRANTED NOVEMBER 25, 1940.

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MURRAY LIFSHEY was thereupon called as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct examination by Mr. Haycraft.

Q. Mr. Lifshey, I understand you wish to make a correction in your testimony of yesterday? A. I do.

Q. Can you indicate by page reference? A. I have not seen the reference.

Q. Can you testify as to what the statement was that you wish to correct? A. Yes. Yesterday's examination, counsel Weisman asked me to name an account whom we did not desire to take any further orders from, due to the fact that according to our records that their returns were out of proportion to shipments at that time. 2270

The Witness: I was in error when I named the account of the Mirror at Atlanta, Ga., as one of the accounts that we had stopped doing business with, because of excessive returns. It was an honest error, noted when I returned to my office and checked the testimony I had given with available records at my office. I had found out that the Mirror of Atlanta, Ga., had been sold last in April of 1936, that the account at no time was turned down, because of excessive returns.

Examiner Bennett: I see. That is all you wish to state? 2271

By Mr. Haycraft.

Q. Do you make any explanation of how you came to make that mistake?

Mr. Weisman: I object.

A. There is an account.

Mr. Weisman: I object to that.

Examiner Bennett: All right. I will overrule your objection. You may answer.

Mr. Weisman: He says it is an honest mistake.

A. There is an account in Atlanta, Ga., that we did turn down in May of 1935. That happened—not to comment on the period under discussion—I don't think it works in here.

Examiner Bennett: Now, you want to go into your redirect?

Mr. Haycraft: I beg your pardon?

2273 Examiner Bennett: I say, do you want to clean up any further with this witness?

Mr. Haycraft: I would like to.

Examiner Bennett: If you have any redirect?

Mr. Haycraft: Yes, I do have some.

Examiner Bennett: Yes. Well, go ahead and have your redirect.

Mr. Ballon: May I state something on that subject?

Examiner Bennett: I beg your pardon?

Mr. Ballon: May I ask one question, your Honor?

Examiner Bennett: Yes.

2274 *Cross-examination by Mr. Ballon.*

Q. Mr. Lifshey, as far as you know, then, the Mirror Shop of Atlanta, Ga., is a perfectly fair dealing, ethical, and decent concern; is that correct? A. Naturally.

Q. And the last time you did business with them was in 1935? A. Was in——

Mr. Weisman: No.

The Witness: Was in April, 1936.

By Mr. Ballon.

Q. April, 1936? A. Yes.

Q. And at that time the transaction was a perfectly clean transaction; is that right? A. It was.

Q. No returns? A. No, sir.

Examiner Bennett: All right.

Mr. Haycraft: I would like to have a 5-minute recess until I can check some of the statements in the record.

Examiner Bennett: Yes, I will give you a recess. Five minutes or ten minutes?

Mr. Haycraft: Better make it ten minutes.

2276

Examiner Bennett: Ten minutes. All right. Mr. Lifshey, you will remain available.

The Witness: Yes.

(There was a short recess taken.)

Examiner Bennett: We will be in order, please. Mr. Lifshey, will you come around and resume the stand, please?

Redirect examination by Mr. Haycraft.

Q. Do you have available your sales records for the months of January, February and March of 1936 and 1935, or do you have those figures in your mind as to the volume of sales? A. January, February and March?

Q. January, February and March. A. '35?

2277

Q. 1935. A. Yes.

Q. Compared with 1936? A. Well, I do not think——

Mr. Weisman: I submit the difficulty is there are two questions. He says, have you got the records or have you got them available, or have you got them in your mind, and I think it would be better if you would split that up.

Examiner Bennett: Very well.

By Mr. Haycraft.

Q. Do you have the records? A. I have a memorandum here. This is made up. This was sent down yesterday upon the request of Mr. Weisman. This gives these items.

Q. Does that show the monthly sales? A. Yes.

Q. What year? A. August, '34, to July, '35, and August, '35, to date.

Q. Can you testify from that memorandum as to your total volume of sales in January, 1935? A. January, 1935?

Q. Yes. A. $103,728.26.

Q. January, 1936? A. $127,039.74.

Q. February, 1935? A. $87,877.97.

2279 Q. February, 1936? A. $24,452.46.

Q. March, 1935? A. $134,750.70.

Q. March, 1936——

Mr. Weisman: May I have that last figure?

The Witness: $134,750.70.

By Mr. Haycraft.

Q. March, 1936? A. $138,134.21.

Q. As a general proposition is February recognized as a good month to sell your dresses, the price dresses that you sell? A. February is the turning point in the seasonal —February is not recognized as a good dress month.

Q. Did you turn back any orders that were received for

2280 dresses during the month of February, 1936?

Mr. Weisman: I object as not proper direct testimony. If we are going to start this all over again, we will be here forever.

(Question read.)

Examiner Bennett: I think that was covered in the cross-examination. I will overrule your objection.

Mr. Weisman: Exception.

Examiner Bennett: During February, 1936, as explained in previous testimony, we had a labor condition that was threatening. Our line, therefore, was not extensive but confined to a few numbers that go into production and come out quickly without any undue delays in the production and, as a result, because of the smallness of the line we had a small month for the month of February, but we did not turn down any orders on those particular dresses.

By Mr. Haycraft.

Q. Were you ever told to stop manufacturing on ac- 2282
count of the imminence of the strike? A. No, we were not told to stop manufacturing. It was left to our own discretion.

Q. As I understood your testimony yesterday, the strike never did occur? There was no strike? A. No, there was no strike.

Q. At the yesterday afternoon hearing—at the noon recess—you were testifying as to the percentages of return; that is, the number of garments returned compared to the total number of garments sold. A. Yes.

Q. On page 1021 you were quoted saying there were 300,000 dresses estimated, and returns—net estimated sales, 300,000 dresses, of which 24,000 or 25,000 were returned, or 8.54 per cent., or .13—what does that mean? 2283
A. I do not believe you have the percentage right. I believe you have the percentage wrong.

Q. What is the right percentage? A. I testified that the percentage of returns for the period August, 1935, to July 11, 1936, as compared with the period from 1934 to 1935, that there was an increase of .77 per cent. in returns.

Q. What were the two periods that you were comparing? A. For the year 1934-1935, and from August to July,

the percentage of returns was 7.54 per cent.; from August, 1935, to July 11, 1936, the percentage of returns was 8.31 (8.13?).

Q. You were asked also whether you could——

Mr. Weisman (interposing): Are you referring to——

Mr. Haycraft (interposing): The same one. The same one. Don't interrupt me.

By Mr. Haycraft.

2285 Q. As to whether you could testify as to what percentage of the returns were returned because of poor workmanship or because the dresses were returned on the claim that they were not as per sample submitted or shown, or late delivery, or that the dresses were returned because they were copies of Guild merchandise. Your testimony was that you could give the estimate, but you could not give the actual figures; is that correct? A. Yes.

Q. Now, I will ask you to give your estimate based upon your experience, the percentage of total returns which were returned because the dresses were alleged to be copies of Guild merchandise?

Mr. Weisman: Just a moment. Oh, no, no. No objection. Go ahead.

2286 *By Mr. Haycraft.*

Q. You may answer. A. I understood the question to be percentage of returns in the 1935-1936 that were directly due to the Guild activities?

Q. Yes. A. Our percentage of returns for that year is——

(The witness made certain calculations for a few moments.)

The Witness: The approximate estimate that I would give would be about one-half of 1 per cent.

By Mr. Haycraft.

Q. When you say one-half of 1 per cent., you mean one-half of 1 per cent. of the total dresses sold that year? A. One-half of 1 per cent. of the total dresses sold.

Q. Sold? A. Sold.

Q. Of the 8.31 per cent., .50 would be for the reasons that they were alleged to be copies of Guild merchandise? A. Of the 8.31 per cent., which was the percentage of returns over sales for the year 1935-1936, I would estimate one-half of 1 per cent. 2288

Q. Can you translate that into the number of dresses on the testimony that you gave yesterday that there was about 25,000 dresses in all that were returned; what would that be in number of garments with reference to the number of dresses returned because they were alleged copies of Guild merchandise?

Examiner Bennett: The testimony was there were about 300,000 dresses.

Mr. Haycraft: 25,000 of them were returned.

Examiner Bennett: He was giving the percentages of dresses as compared to the total number of dresses sold, was he not?

Mr. Haycraft: I see your Honor's point.

The Witness: Estimating that on the percentage of dresses sold at one-half of 1 per cent., I would estimate there would be somewhere between 1,200 and 1,500 dresses. 2289

By Mr. Haycraft.

Q. I take it, then, that the balance would be for the reasons you testified yesterday? A. Yes, sir.

Q. You were cross-examined quite extensively with respect to the so-called warranty stamp that was placed on orders that were given you by your customers? A. Yes.

Q. Particularly in the fall of 1935 you related a conversation you had had with buyers, and also referred to the correspondence with reference to such returns where sometimes they were accepted and sometimes they were not. I now want to ask you—strike that out. I call your attention to your testimony on pages 1055 and 1056, and also on 1057 of the record where you were questioned about the so-called promise that you made to Jones & Company, Stores Store, and Wanamaker's Store, as a result of the
2291 warranty stamp placed on that order by those companies. A. Yes.

Q. You testified that in the case of the Jones Store you intended to keep the promise with reservations with respect to Wanamaker, on the other hand, with respect to Wanamaker's order you had no such reservations. A. Yes.

Q. I want to ask you this question: Did you ever voluntarily promise either the Wanamaker's Store or the Jones Store or any other store that you would take the order with the stamp on it?

Mr. Weisman: Objected to as immaterial. The record speaks for itself.

Examiner Bennett: Read the question.

2292 (Question read.)

Examiner Bennett: I will sustain the objection.

Mr. Weisman: Exception.

(The question was read as follows: "Q. On page 1052 you testified in the affirmative in answer to the following question: 'Q. So that when you accepted the order for the merchandise herein referred to, you clearly knew that according to the terms of the order you had promised not to send in fulfil-

ment thereof any copies of Guild merchandise; is that not so?' Now, I ask you whether or not the promise that you made, or you said you made in your answer yesterday, was a voluntary promise or otherwise?")

Mr. Weisman: Have you finished your question?

Mr. Haycraft: Yes.

Mr. Weisman: I object to that. That is a matter for the Court to determine, and not to be the subject of the conclusion of this witness. We have all of the facts. Now he is calling for the witness to pass upon a matter which is for the tribunal to pass upon. Certainly that is a conclusion for the 2294
Commission to draw from the facts and circumstances. Certainly the Commission should be permitted to draw that conclusion from the facts and circumstances as they appear here and not from what this witness considers it. We have got the facts.

Examiner Bennett: Are you through?

Mr. Weisman: Yes.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

Examiner Bennett: Noted. Proceed.

The Witness: It was not a voluntary promise.

By Mr. Haycraft.

2295

Q. Why did you make it? A. It was a question of taking the order with the stamp on it, or not accepting the order at all.

Mr. Weisman: Now, I submit that the first part of the answer be stricken out because it shows it was a voluntary promise. It definitely shows it was a voluntary promise.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

By Mr. Haycraft.

Q. At that time were you a member of the Guild? A. What?

Q. At that time were you a member of the Guild? A. Was I a member of the Guild?

Q. Yes. A. No.

Q. Have you ever been a member of the Guild? A. No.

Q. Were you ever consulted by the Guild or by Gimbel's or the Jones Store or Wanamaker's, or any of your cus-
2297 tomers as to whether you wanted to make that sort of an arrangement with them? A. No, sir.

Q. Was it against the policy of your organization, or was it not, to include a promise of that sort? In other words, was it in conformance with the policy of your store at that time, or was it not in conformance with the policy of your organization at that time?

Mr. Weisman: I object to that question as vague, ambiguous, and immaterial, and irrelevant.

The Witness: I do not understand your question.

Mr. Weisman: Wait a minute. I hope you will not have to answer it.

Examiner Bennett: You might reframe it.

2298 *By Mr. Haycraft.*

Q. Was the giving of such warranty, or the making of such promises, a part of the business policy of your organization at that time? A. It was not.

Mr. Weisman: I object and move to strike the answer. I thought my objection would affect the second question also.

Examiner Bennett: We will have it apply to both questions. As to both they are overruled and exception noted.

Mr. Weisman: Exception to both.

Examiner Bennett: Yes.

By Mr. Haycraft.

Q. You have testified as to the instances that you discussed; that is, the matter of Miss Dean and others. I will ask you this question: Whether on any other occasion you protested to buyers against the placing of such a stamp on orders——

2300

Mr. Weisman (interposing): I object to that as improper redirect.

Mr. Haycraft: Wait until I finish my question.

Mr. Weisman: I thought you had finished.

Mr. Haycraft: No. You knew I hadn't.

Mr. Weisman: Well, go ahead and finish it.

By Mr. Haycraft.

Q. —placed with your firm?

Mr. Weisman: Obviously, we are starting to try this case all over again.

Examiner Bennett: That was gone into at length.

Mr. Weisman: Only as to the instances developed. I think we had the complete situation. 2301

Examiner Bennett: You cannot direct the redirect examination by your cross-examination. You open up the subject and the other counsel can then take the witness, and if he wishes to develop this, he may develop the situation just as you did on cross-examination. I will deny your motion.

Mr. Weisman: Before your Honor rules on it, may I also call your Honor's attention to yester-

day's session wherein you ruled that this statement as to the other buyers, ad homonium, was not competent unless it was directed to specific buyers, otherwise I would not be allowed to develop the matter, because I, in turn, would be put in a position where I would not be able to cross-examine.

Your Honor ruled that I could not meet this type of testimony that you were referring to then if you took up these other buyers. Now I think we are having this same attempt all over again.

Examiner Bennett: Overruled. Go ahead.

(Question read.)

2303 A. I did. There are quite——

Mr. Weisman (interposing): Just a moment. He asked you a question and you have answered it.

By Mr. Haycraft.

Q. On more than one occasion? A. Yes, sir.

Q. Did you ever adopt the policy of refusing to place orders with dealers who insisted on putting that stamp on? A. You mean accept orders?

Q. Accepting orders with dealers who placed that stamp on their orders? A. We did for a short time.

Q. How long a period of time? A. I should think about a week or ten days.

2304 Q. And then what? A. In 1935, directly after that, a group of $4.75 dress manufacturers had gotten together and agreed among themselves not to accept orders with the Guild stamp on them.

Q. You say for about a week you did that? A. About a week or ten days.

Q. What was the reason for——

Mr. Weisman (interposing): I object.

Mr. Haycraft: Wait until I finish my question.

Mr. Weisman: I thought you had finished.

Mr. Haycraft: No.

By Mr. Haycraft.

Q. —discontinuing that policy?

Mr. Weisman: I object to it as incompetent, immaterial and irrelevant, the reasons for that.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

A. We found by refusing orders because of the warranty, Guild warranty stamp on same, that the buyers who were placing that order had definite instructions from her superior not to leave any orders unless that stamp was on the order. She had no other alternative, and it was a question if we refused the order we refused that amount of business. It proved useless to argue with the buyer, a buyer that had definite instructions as to that point, and rather than see the business out of the door we began to accept the orders regardless of whether the stamp—whether it had a stamp on it or not. 2306

Mr. Haycraft: That is all.

Examiner Bennett: Do you have any questions, Mr. Weisman?

Mr. Weisman: Oh, yes, I have a whole lot of questions for this witness, your Honor. 2307

Examiner Bennett: Proceed.

Recross-examination by Mr. Weisman.

Q. What was the name of the store in Atlanta, Georgia, that was unethical in making a large number of unjustified returns?

Mr. Ballon: May I object to that question, your Honor?

Examiner Bennett: I will sustain the objection.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Would you have us understand that you cut out more than one house?

Examiner Bennett: Let me call your attention to the fact that you have another incident that you have not stressed, and that is the Jones concern.

Mr. Weisman: He did not testify he refused to
2309 accept orders from them.

Examiner Bennett: What is the situation there?

By Mr. Weisman.

Q. The Court has indicated that it believes you testified that you refused to do business with the Jones concern because of unjustified returns; is that correct? A. No. I never refused to accept their orders.

Q. Did you refuse to accept that particular return? A. Yes.

Q. Did you refuse to accept the particular return, if I remember correctly, because it was ten weeks in coming in, or something of that sort? A. Yes.

2310 Examiner Bennett: I stand corrected.

Mr. Weisman: That was my recollection.

By Mr. Weisman.

Q. You, thereafter, did business with the Jones Store? A. Yes.

Q. You are doing business with them now? A. We have since that time.

Q. You have done business with them notwithstanding the fact that they are still using the Guild stamp? A. I really do not know. This distribution order comes in from William T. Motz and it has the stamp on it.

Q. The stamp is on it? A. I believe it is.

Q. You know it is, do you not? A. It has gotten so we do not look for the stamp any more, on orders. We do not pay any attention to it.

Q. I do not care whether you look for it or not, if you fail to look for it because you know it is there and you do not, for that reason, look for it because you know it to be there; is that it? A. We just do not look for it. It is out of my mind.

2312

Q. Do you not look at your orders at all? A. Yes.

Q. If it is there do you see it? A. It is not where you can see it always. The stamp is sometimes placed on the back of the order.

Q. Do you mean to say that you do not look on the back of the order to see what the terms of the merchandise purchased are? A. After handling thousands and thousands of orders, you look for the vital thing in the orders that concern you, which are: The name of the account, the city, the order number and department number, terms, style number of dresses, the quantity and numbers, and the other printed matter, except for the price; the other printed matter I do not believe I have ever read in my entire business experience.

2313

Q. When you say "vital," do you mean important? A. Important to the transaction of our particular business.

Q. You do not think that the Guild stamp is important or vital to the particular transaction? A. We do not.

Q. You do not read it, anyway? A. I do not pay any attention to it any more. I only look for the vital things.

Q. You deem that Guild stamp is a matter of rather indifference to you; is that so? A. We deem the warranty implied in this Guild stamp, yes.

Q. You are indifferent? A. Not indifferent to us, but——

Q. You have just testified you did not look at it because you did not look at it— A. What?

Q. Because—do not interrupt me, please. A. I am sorry.

Q. Wait until I finish the question. A. I will.

Q. You have also testified that when you say "vital," it is synonymous with the word "important," so that you say that the Guild stamp is of no importance to you? Is that so?

Mr. Haycraft: That is objected to, being not
2315 only a double question but a triple question?

Mr. Weisman: Nothing triple, or anything about it.

Mr. Haycraft: I object to the form of the question and ask the question be framed in a legal way.

Examiner Bennett: Yes. Read the question.

(Record read.)

Examiner Bennett: Yes, I wish you would designate which one of those questions you want him to answer.

Mr. Weisman: All right. I will ask him separately now.

By Mr. Weisman.

2316 Q. I understood you to say a moment ago, Mr. Lifshey, that you did not know whether your present orders had Guild stamps on them or not; is that correct? A. I did.

Q. And when I asked you how this condition of mind came about you said that when you looked at orders, you only looked at them for the vital parts thereof; is that correct? A. I did.

Q. Now, I ask you whether or not, by your use of the word "vital," you meant "important," and you said "yes"; is that not so? A. I did.

Q. So that when you said "vital part," that was the same as if you had said "important part"? A. Correct.

Q. So that your statement would be that you do not know whether or not the orders had the Guild stamp on them because that is not, to you, an important part of an order; is that correct? Is that correct? A. Yes.

Q. Now, we have that fixed. A. Yes.

Q. That you do not deem the Guild stamp a vital or important part of an order? A. To me, yes.

Q. Yes, I see. And that has continued— A. At the present time?

Q. For how long? A. We were referring to all orders placed at the present time?

2318

Q. Yes. A. You are referring to the Jones Store?

Q. Yes. Well, I want to know how long you have deemed the presence of the Guild stamp, or its absence from your orders, unimportant? A. Well, I would estimate—I would state about the time when the Trade publications came out with articles, discussions on different fashions.

Q. When was that—don't give us——

Mr. Haycraft: Let him finish his answer.

Mr. Weisman: I have asked him for a date, and he has given me something that does not illuminate——

Mr. Seidman: He is trying to fix the date.

Mr. Weisman: He should try in his own mind; not on the record.

2319

Mr. Haycraft: Let the Examiner decide that.

By Mr. Weisman.

Q. Try to give me the date when you came to that conclusion?

Mr. Haycraft: I ask that the witness be allowed to complete his answer now uninterrupted.

Mr. Weisman: I ask that that part of the answer already given be stricken out. I have asked for a date.

A. Early part of March, I should estimate.

By Mr. Weisman.

Q. That is, then, commencing with the early part of March down to date you have deemed the question of whether or not the Guild stamp was on your orders was unimportant? A. I have.

Q. And because you have deemed it unimportant, you
2321 have not observed your orders to ascertain whether or not they had the Guild stamp? A. I have not.

Q. You want us to believe that since that time you have not looked at your orders to see whether or not this customer or that customer put the Guild stamp on them? A. No, I have not.

Q. What did you mean by testifying, then, yesterday, that 50 per cent. of your customers put the Guild stamp on their order, if you did not know? A. I was speaking about the latter part of 1935 at that particular time.

Q. Oh.

Mr. Haycraft: That is when the question stated.

By Mr. Weisman.

2322 Q. The latter part, so that with the exception of the latter part of 1935, you do not know what percentage or what proportion of your customers put the Guild stamp on their order, do you? A. You mean at the present time?

Q. No, from March. A. From the 1936 period?

Q. Yes. In the 1936 period. A. In the 1936 period I could make an estimate similar to the estimate I made on the other question.

Q. You mean similar estimate based on no fact that you have any knowledge of; is that what you mean by an estimate? A. There are certain facts that I do have knowledge of.

Q. Wait a moment. When you say "estimate"—when you use the word "estimate," do you mean a guess? A. No, I base it on——

Q. Let me ask you this: I want to find out something from you. Do you mean, that notwithstanding the fact that you have not looked at the orders, and that you have testified since March of this year you don't know who put the stamp on and who does not put the stamp on, and that you have not deemed it important to examine them, 2324 and that in some cases the order stamp was on the back and you never see that, that notwithstanding that general state of your mind, and notwithstanding that that is the type of knowledge that you may or may not have, you are still willing to testify, under oath, that 50 per cent. of your customers have the stamp? A. I was——

Q. Are you willing to do that? A. Are we talking about 1935?

Q. 1936. A. When this Guild question——

Q. No, 1936. A. We are talking now of January to date, of 1936?

Q. No, March to date. A. Oh, March to date, of 1936?

Q. Yes. A. I can only base my estimate on the knowledge of those offices that I know are not continuing to put their Guild stamp on their orders. 2325

Q. Obviously you did not understand my question.

Mr. Haycraft: That is proper.

By Mr. Weisman.

Q. You have testified that you do not look at those orders. A. Correct.

Q. You also testified that you deem it unimportant whether or not the order contains the Guild stamp; is that not so? A. Yes, sir.

Q. And now I have said to you that notwithstanding the fact that you do not know how many of your orders actually have the Guild stamp, see—you have so testified—and notwithstanding the fact that you say it is unimportant, are you still willing to give it as a fair estimate that 50 per cent. of your orders contain this stamp, when you base it on such lack of knowledge as you have exhibited in your answer to your prior questions?

Mr. Haycraft: Wait a moment. That is objected
2327 to as argumentative.

Mr. Weisman: Oh, I have——

Mr. Haycraft: Can have no probative value.

Examiner Bennett: I will sustain the objection to that form of question.

Mr. Weisman: Exception.

Examiner Bennett: To that form. If you want to state it so as to represent what the witness did testify to I will be glad to permit it.

Mr. Weisman: I think the record is clear.

Examiner Bennett: I will be glad to hear it. As I understand it, he did not testify that during the entire period he paid no attention to the Guild stamp.

2328 Mr. Weisman: Oh, yes, that is so.

Examiner Bennett: He testified that after a certain time——

Mr. Weisman: Yes, March.

Examiner Bennett: The matter, of course, is not so important to us after March, or after April, anyway, as it was during 1935, and I think if you want to ask him about 1935, which, as I understand it, he did pay attention to the Guild stamp, during that

period, why, that is all right. If you want to ask him about 1936, when he did not, that is all right, but do not mix the two together so as to indicate that he testified as to one period upon his observation as to another period.

Mr. Weisman: Very well.

By Mr. Weisman.

Q. Well, in any event, there is no doubt that since the early part of March, 1936, you did not observe your orders as to whether or not they contained the Guild stamp or not? A. That is correct.

Q. So that you have no firsthand knowledge with regard thereto? A. With regard to that latter part? March to date I have not. 2330

Q. All right. Now, I believe that in answer to your attorney's query you gave the Mirror a fine recommendation.

Mr. Haycraft: That is objected to, Mr. Examiner.

Mr. Weisman: Well, I will withdraw it.

By Mr. Weisman.

Q. You stated that the Mirror Shop of Atlanta, Ga., was a high class, ethical, fair dealing shop—were those not your words? A. No, sir.

Q. What?

2331

Mr. Haycraft: I object to that, Mr. Examiner. It is not proper——.

Mr. Weisman: That is something new, it was brought out here over my objection. Am I bound to accept this statement of this witness?

Mr. Haycraft: It all relates, Mr. Examiner, to subsequent matters not brought out on direct examination.

Examiner Bennett: The fact of the matter is that the testimony had no place in the record.

Mr. Weisman: Your Honor left it in.

Mr. Haycraft: I am asking, your Honor, to strike it out. I move to strike it at this time.

Mr. Weisman: I think you are rather late.

Examiner Bennett: Well, I think it is late.

Mr. Haycraft: I move to strike it out.

Examiner Bennett: But, as I understand, there were objections made at the time. I let the matter run on because I did not want to bother cross-examination if I could help it, but I guess we will
2333 have to draw the line close on you, and I sustain the objection to going into it further.

Mr. Weisman: Exception.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Don't you know that the Mirror still puts the Guild stamp on its orders that is sent to you?

Mr. Haycraft: Same objection.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: Yes.

By Mr. Weisman.

2334 Q. Now, in your testimony this morning at the hands of Mr. Haycraft, you testified that your business in January, 1935, was $103,728.26; is that correct? A. Yes, sir.

Q. And, notwithstanding the Guild activities in January, 1936, the same month, you had a better month by 20 per cent. or 25 per cent.; is that not so?

Mr. Haycraft: That is objected to, Mr. Examiner; not proper recross-examination.

Mr. Weisman: You brought that out. What do you mean? I objected to all of this.

Mr. Haycraft: May I be heard, Mr. Examiner?

Examiner Bennett: Just a moment, Mr. Weisman.

Mr. Weisman: Excuse me, your Honor; I am a little tired.

Examiner Bennett: Make your objection.

Mr. Haycraft: I further object to it as not proper recross-examination——

Examiner Bennett: Yes.

Mr. Haycraft: —that it is argumentative, and irrelevant to any issues in this case. 2336

Examiner Bennett: I overrule your objection. You brought out that matter.

A. There was an increase of approximately—well, exactly $24,400 some odd dollars.

By Mr. Weisman.

Q. That is approximately a 25 per cent. increase, is it not? A. Well, 25 per cent. over January of 1935.

Q. Yes, yes. A. Yes, correct.

Q. Now, Mr. Haycraft also developed that your business in February, 1934—no, 1935, was $87,877. A. Correct.

Q. But that for the following year, for the same month, it was $24,452. A. Correct. 2337

Q. What was that enormous drop due to? A. As I explained——

Mr. Haycraft: I object, Mr. Examiner. Not proper recross-examination. The witness has already testified on cross-examination about this. And all I did in the world was to put the exact figures in for those three months——

Mr. Weisman: Oh, no, you did not. Excuse me.

Mr. Haycraft: —there should be no further question as to what the figures were.

Mr. Weisman: You did much more before that.

Mr. Haycraft: The witness had testified from memory on the preceding day, and all I did was to put in the exact figures.

Mr. Weisman: You did much more than that. You asked him all about these figures.

Examiner Bennett: Let us not have any further argument. The objection is overruled.

By Mr. Weisman.

2339 Q. That was due to the imminence of this strike, was it not? A. Correct.

Q. And as a careful, prudent merchant, you did not want to be caught with a lot of goods out with the cutters that could not be sent in; is that not so? A. Yes.

Q. And finished in time? A. Yes.

Q. And that is the reason for that drop; is that not so? A. Well, that was the reason for the drop.

Q. You also testified that in March, 1935, your total sales were $134,750 odd dollars; is that not right? A. Correct.

Q. And in the following year for the same month there was a slight increase of $5,000? A. About five—or $4,000.

Q. Or 4 per cent. per month? A. Correct.

2340 Q. That is correct? A. Yes—about 3 per cent.

Q. Now, am I to understand that Wanamaker exacted from you an involuntary promise?— A. I don't quite understand.

Q. —that you would not send copies— A. Wanamaker exacted from me an involuntary promise not to—

Q. Yes. A. —in which form was this promise you are talking about?

Q. That is what I am trying to find out. You testified from Mr. Haycraft that when you made that promise to

Wanamaker's it was not voluntary; then when you promised Wanamaker you would not send them any copies, that it was an involuntary promise. Is that right? A. Are you referring to the warranty stamp?

Q. That is right. A. On Wanamaker's orders?

Q. Yes, yes. A. And that on my part the acceptance of that promise was not voluntary?

Q. I mean the— A. The making of that promise?

Q. Yes. A. Was not voluntary on my part?

Q. Yes; is that your statement? A. It is.

Q. Well, were you willing to keep that promise even though it was involuntary? A. With Wanamaker's account? 2342

Q. Yes. A. I would have; I did.

Q. Do you think that Wanamaker's knew that your promise was involuntary?

Mr. Haycraft: That is objected to.

A. I don't know what they knew.

By Mr. Weisman.

Q. What? A. I don't know what they knew. I——

Q. Did you ever give them any reason to believe so that they would know that they were forcing you into making a promise? A. As far as John Wanamaker Company itself is concerned, I don't know what they believed or what they thought. I believe I can—— 2343

Q. No, I am asking you about John Wanamaker.

Mr. Haycraft: Let him finish his answer; let him finish his answer.

A. I have——

By Mr. Weisman.

Q. Have you told us all— A. I don't know who John Wanamaker is, I mean.

Examiner Rennett: Do not interrupt the witness; let him answer.

A. It is a store; it is no person. I feel that I know the opinion as Miss Cosgrove on the matter of that particular warranty stamp, because we did have occasion to talk things over, about the warranty stamp, as concerning her sales of certain numbers in competition to chain store competition, and so on——

2345

By Mr. Weisman.

Q. Do you know who was in charge of merchandising at Wanamaker's? A. No.

Q. Did you ever hear of Mr. Knox? A. No.

Q. Did you ever hear of Mr. Appel? A. No, I don't believe I have.

Q. Now, let me ask you this: You were asked whether or not it was part of your policy to make such promises on redirect? A. I was.

Q. And I think that you said it was not part of the Trussel Dress Company's policy to make such promises? A. I did.

Q. But you made them? A. I did.

2346 Q. Now, let me ask you this: Is it part of the Trussel Dress Company's policies to make promises with private or secret reservations as to the fulfilment of those promises?

Mr. Haycraft: That is objected to, Mr. Examiner; not proper recross-examination.

Mr. Weisman: Oh, yes, you brought out what his policy was. Now, we will have a little inquiry on this.

Examiner Bennett: Overruled. All right, go ahead. A. I believe——

By Mr. Weisman.

Q. No; is that the policy? A. It was the policy of the Trussel Dress Company——

Q. No. Will you listen to my question, please?

Examiner Bennett: You do not have to answer "yes" or "no"; you may go ahead and answer.

Q. (Question read.) A. It is not their policy to make such—not their policy.

2348

By Mr. Weisman.

Q. But, notwithstanding that you say that you did that with regard to the Jones Company?

Mr. Haycraft: That is objected to. Not proper redirect examination. I did not inquire into the Jones' account.

Mr. Weisman: I have got an instance where it shows he had a different policy.

Mr. Haycraft: Yes, I know, but I did not inquire into that.

Examiner Bennett: I think I will sustain the objection.

Mr. Weisman: All right, exception.

2349

By Mr. Weisman.

Q. Now, on redirect examination this morning Mr. Haycraft asked you over my objection about other buyers; do you remember that? A. I do.

Q. And you testified, if I recall correctly, that other buyers also insisted on this warranty stamp? A. I did not say that other buyers insisted upon a warranty stamp.

Q. What did you say? A. I stated that other buyers had been instructed by their superiors in their New York office not to leave an order without the warranty stamp, and that it was found to be useless to argue with a man who was given instructions by his superior and who could not do otherwise, regardless of any argument.

Q. In other words, these buyers said, in words or substance, to you, that, "We are willing to give you this order with the stamp but we do not want copies of Guild merchandise"; is that not a fair statement? A. No.

Q. Well, is that not what the warranty stamp says?

Mr. Haycraft: I object.

2351

A. The warranty stamp——

Mr. Haycraft: The warranty stamp speaks for itself.

The Witness: It implies that——

Mr. Haycraft: Just a moment.

The Witness: But it does not——

Mr. Haycraft: I have an objection, Mr. Examiner.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Now, who are some of these buyers?

2352

Mr. Ballon: May I instruct the witness, your Honor, with regard to his rights on this subject matter?

Examiner Bennett: You may instruct him as to his rights, but do it on the record.

Mr. Ballon: May I say, Mr. Lifshey, if you deem it inadvisable, for any reasons, to your own satisfaction, not to answer this question, with the deepest

respect to the Court, I say to you that the Court has no power to compel you to answer this question, because it lacks the power to hold any witness in contempt of Court. I say that so that you may know, if by reason of your voluntary appearance here in Court to-day you feel you are being asked questions which might tend to subject you to embarrassment in the future, you need not answer those questions if you do not want to.

Mr. Weisman: Now, I ask you to answer the question.

The Witness: May I have the question, please?

2354

Q. (Question read as follows:) "Q. Now, who are some of these buyers?" A. I don't remember.

Mr. Haycraft: Read the previous question.

Examiner Bennett: The question has been answered. He does not remember.

By Mr. Weisman.

Q. What is the answer? A. I don't remember any definite buyer.

Q. Is that an honest answer?

Mr. Haycraft: I object to that question, your Honor.

Examiner Bennett: Sustained.

2355

Mr. Weisman: Exception. I think, your Honor, that under these circumstances——

Examiner Bennett: Oh, I do not think—I do not think we are permitted to stand up and reflect upon the witness' rights in this case.

Mr. Weisman: I want, your Honor——

Examiner Bennett: It is very well known that a Tribunal has the right to protect witnesses when, in their judgment, there is needless reflection upon their integrity.

Mr. Weisman: Well, your Honor——

Examiner Bennett: We are not bringing witnesses in here to be insulted.

Mr. Weisman: After a speech like this——

Examiner Bennett: If you want to bring out the facts, or to show that there is no—that this witness is not trustworthy, why, that is one thing, and we will give you full scope. If you want to get up here, do that all right, but if you want to get up here and abuse him, just through your privilege of attorney, why, I am not going to permit that.

Mr. Weisman: Your Honor can see what tran-
2357 spired here.

Examiner Bennett: I have seen.

Mr. Weisman: After this long advice by his attorney that he need not answer, and that the Commission has no power to punish him, and then upon reflection, when I ask him the names of these buyers, he now says, "I don't remember."

Examiner Bennett: Well, if he——

Mr. Weisman: I submit I am entitled to ask him on cross-examination on so vital and important a question, and upon a question which you know——

Examiner Bennett: I have already ruled on this, Mr. Weisman.

Mr. Weisman: But——

Examiner Bennett: I have already ruled on this
2358 and I am not changing my rulings.

Mr. Weisman: All right.

Examiner Bennett: If you will just go ahead.

Mr. Weisman: All right; I have an exception. I further move at this time that all the testimony given by this witness be stricken out upon the ground that this statement that he does not remember is obviously a subterfuge resorted to avoid answering the question.

Mr. Ballon: I ask that counsel's remarks be stricken from the record.

Examiner Bennett: Go ahead.

Mr. Ballon: Very obviously——

Mr. Weisman: I want it in the record.

Mr. Ballon: It is very obviously a reflection on this witness.

Examiner Bennett: I am passing on that. That motion is denied.

Mr. Weisman: Exception.

Examiner Bennett: And I will terminate this cross-examination right here.

Mr. Weisman: You mean your Honor denies me 2360
the opportunity——

Examiner Bennett: Yes, I will terminate it right here.

Mr. Weisman: ——of further opportunity of examining this witness?

Examiner Bennett: It has gone on long enough.

Mr. Weisman: Oh.

Examiner Bennett: You have had more time than the attorney had on redirect.

Mr. Weisman: I respectfully——

Examiner Bennett: You are going over the same ground that you went over before; and I am going to terminate it right now.

Mr. Weisman: Exception. I wish to make this statement for the record. I respectfully except to 2361
the curtailment of my cross-examination at this time on the ground that the curtailment is injuring and destroying the rights of my clients in the premises; upon the further ground that if I were permitted to continue this examination I would be able to show that the witness has an independent recollection of who these buyers were whom he claims to have spoken with, and that by eliciting this infor-

mation I would be in position to show the Commission the falsity of the statements alleged to have been made by them.

Examiner Bennett: All right.

Mr. Weisman: Exception.

Mr. Ballon: May I have the remarks regarding the falsity of this witness be stricken from the record? If that is supposed to be a tender of proof, certainly it is the funniest tender I have ever heard, cannot serve any purpose at all; certainly it is not a legal objection and certainly not an offer of proof.

Mr. Weisman: Certainly it is a legal statement
2363 of my position.

Examiner Bennett: All right.

Mr. Weisman: Thank you.

Examiner Bennett: I am not striking out anything that reflects upon the Examiner.

Mr. Weisman: Oh, what did your Honor say?

Examiner Bennett: I say, I am not striking out anything that reflects upon the Examiner.

Mr. Weisman: Oh, no, nobody reflected—he did not say reflected upon the Examiner.

Examiner Bennett: That statement that you just made that you wanted stricken.

Mr. Weisman: No, he said it reflected on his client.

Examiner Bennett: Well, I do not think it was
2364 intended to reflect on his client especially.

Mr. Weisman: I want to say that there was no intention to reflect on the Examiner, your Honor.

Examiner Bennett: Well, I am not quarreling with you.

Mr. Weisman: All right.

Mr. Haycraft: I have no further examination of this witness.

2365

Mr. Weisman: And I am not permitted to examine you further; so you may go.

Examiner Bennett: Yes; you may go.

(Witness excused.)

Mr. Haycraft: I will ask, Mr. Examiner, that Mr. Ballon take the stand at this time.

Examiner Bennett: Well, we will take a recess for five minutes.

(There was a short recess taken.)

2366

Mr. Haycraft: I now desire to call Mr. Ballon for a few questions.

Mr. Weisman: I will waive the swearing of this witness. He is a member of the New York bar.

Examiner Bennett: He has been sworn already.

Mr. Ballon: I appreciate your courtesy.

CHARLES BALLON was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

2367

Q. State your full name, your residence, and occupation, Mr. Ballon. A. Charles Ballon, 240 West 75th Street, New York City, N. Y. I am an attorney.

Q. Have you been employed by a group of manufacturers of ladies' and misses' dresses?

Mr. Weisman: I object to that as immaterial.

Mr. Haycraft: It is a foundation question.

Examiner Bennett: I will allow it as a foundation question and I will see what you are developing.

A. I, personally, was not, but the firm that I am associated with was.

By Mr. Haycraft.

Q. Pursuant to that employment have you been engaged in representing a group of dress manufacturers known as the Popular Priced Dress Manufacturers Association in connection with the practice of returning dresses to them
2369 by retail dealers because of the dresses being registered by members of the Fashion Originators Guild of America, Inc.?

Mr. Weisman: I object as incompetent, immaterial, and irrelevant, as leading, and not based upon anything that the witness has heretofore stated; it is a clear cut violation of the hearsay rule, and of no interest in this case whatsoever. It does not correctly set forth the facts furthermore.

Mr. Haycraft: Let the witness testify.

Examiner Bennett: I wish you would chop that question up.

By Mr. Haycraft.

2370 Q. Have you been engaged by the Popular Priced Dress Manufacturers Dress Association to represent them in the matter of the returning of dresses from retail dealers because they were alleged to be copies of dresses designed by the Fashion Originators Guild of America, Inc.?

Mr. Weisman: I object to that as incompetent, immaterial, and irrelevant.

Mr. Haycraft: It is purely foundation.

Mr. Weisman: You cannot bring in all of this type of matters by representing it as foundation.

Examiner Bennett: There has not been anything beyond that yet. Go ahead and I will see what you bring out and if it is improper I will strike it out.

A. We were requested to render legal advice and initiate legal proceedings to bring about some correction or stoppage of any policies which were improper by reason of the return for the reason that you cited.

Mr. Weisman: I ask that the answer be stricken out as irresponsive, stating a conclusion; incompetent, immaterial and irrelevant. Unless Mr. Haycraft intends to substitute Mr. Ballon for the Commission I am at a loss to see the advisability of this testimony. I am somewhat at a loss to know just where we are going here. 2372

Examiner Bennett: I think I will ask you, Mr. Haycraft, at this point what you expect to bring out?

Mr. Haycraft: I merely expect to qualify this witness, and then through this witness to identify certain documents. That is all in the world I want to do.

Examiner Bennett: The documents relate to what?

Mr. Weisman: What documents?

Mr. Haycraft: Orders, returns, things of that kind. I expect to introduce them in evidence later in this proceeding. 2373

Mr. Weisman: He did not get them.

Mr. Haycraft: How do you know he did not?

Mr. Weisman: He is not in the dress business.

Mr. Haycraft: We will find out.

Examiner Bennett: I will let him go ahead.

Mr. Weisman: May I have the last answer stricken out?

Examiner Bennett: I will strike out the latter part of the answer after the words "We were requested to render legal advice."

Mr. Haycraft: I ask that these documents be marked for identification.

Mr. Weisman: All through this case, Mr. Examiner, your Honor would not permit me to mark documents for identification. I have noticed that my adversary does not even ask the Court whether he should mark them for identification or not, but just hands them to the reporter. I object at this time to anything being marked unless some foundation is being laid for it, and unless I am given an

2375 opportunity to inspect those documents. Certainly, it seems to me, your Honor, I have a right to inspect those documents and see what is being tendered for identification. I am not permitted to do so, and in not being permitted to inspect those documents I think I am being deprived of a very material right.

Examiner Bennett: I do not desire to deprive you of any right which you are properly entitled to. I think it is perfectly proper to have the Trial Examiner control the marking of exhibits as far as that is concerned. This is a very loose practice and probably should be discontinued. I will instruct the reporter now to mark certain documents with the next numbers for identification.

2376

By Mr. Haycraft.

Q. I show you Commission's Exhibits Nos. 336-A and B, 337-A and B, 338-A and B, 339-A and B, 340-A, B, C, D and E, 341-A and B, 342-A and B, 343-A and B, 344-A, B and C, 345-A, B and C, 346-A and B, 347, 348, 349, 350 and 351, and ask you whether or not those papers were furnished you by one I. Feinberg, president of Excellent

Dresses, Inc., of New York, a New York corporation doing business at 501 Seventh Avenue, New York City?

Mr. Weisman: I object to that as immaterial. I do not care who they were that furnished them to him. Obviously these papers cannot be put in evidence this way.

Mr. Haycraft: I am not putting them in evidence but I am simply showing the exhibits to him and asking him to identify them at this time.

By Examiner Bennett.

Q. Proceed. A. Yes, sir; they were. 2378

By Mr. Haycraft.

Q. They were? A. Yes, sir.

Mr. Haycraft: Now, at this time, for the purpose of identification, Mr. Examiner, and only for the purpose of identification, the following documents.

Examiner Bennett: They may be so marked.

By Mr. Haycraft.

Q. I show you Commission's Exhibits 352-A to and including 352-L, purporting to be correspondence between the Mabley & Carew Company, Cincinnati, Ohio, A. E. Stern, and the various parties therein referred to, and ask you whether or not that correspondence was furnished to 2379 you by Sidney Blauner, of Lombardy Frocks, Inc.

Mr. Weisman: I object to it as incompetent, immaterial, and irrelevant.

Examiner Bennett: Objection overruled at this time.

A. Yes, sir.

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 353, and ask you whether or not this correspondence between Jomax Frocks and certain retail dealers described therein, and whether that correspondence was furnished to you by Dave H. Jahrmarkt of Jomax Frocks, Inc.?

Mr. Weisman: I object to that as incompetent, immaterial, and irrelevant.

Examiner Bennett: Overruled.

A. It was.

2381 *By Mr. Haycraft.*

Q. I show you Commission's Exhibits Nos. 354-A to J, purporting to be correspondence between Solo Dresses, Inc., and the retail dealers named therein, and ask you whether or not this correspondence was furnished to you by Sidney Zucker, Treasurer of Solo Frocks, Inc.?

Mr. Weisman: I object to it as incompetent, immaterial, and irrelevant.

Examiner Bennett: Overruled.

A. It was.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 355, an original
2382 letter from Frank & Seder Company, signed Janet Levin, and addressed to Tebo Frocks, 1375 Broadway, New York, under date of November 5, 1935, and ask you whether or not that was furnished you by Mr. Robert Caine, president of Tebo Frocks, Inc.

Mr. Weisman: I object to it as incompetent, immaterial, and irrelevant.

Examiner Bennett: Overruled.

A. It was.

2383

By Mr. Haycraft.

Q. I now show you Commission's Exhibit 356-A to 356-E, parporting to be correspondence between Eclipse Dress and certain retailers named therein, and ask you whether or not this correspondence was furnished to you by Mr. Jacob Cohn, president of Eclipse Dress Company, Inc.

Mr. Weisman: I object to it as incompetent, immaterial, and irrelevant.

Examiner Bennett: Overruled.

A. Yes, sir; it was.

2384

Mr. Haycraft: Those are all the questions I desire to ask this witness at this time.

Mr. Weisman: No cross-examination. I move that all his testimony be stricken out.

Examiner Bennett: I deny the motion at this time. It is Greek to me as far as that is concerned, but I can see some relevancy in trying to trace the custody of these documents. If there is proper identification later that will show where they came from, and that may be vital as an element in final identification. They are not being offered in evidence at this time. It certainly will not go in evidence without further testimony.

(Witness excused.)

2385

Mr. Haycraft: I desire to offer in evidence at the present time Commission's Exhibits Nos. 13-A, 13-B, 13-C, 13-D, 14-A, 14-B, 15, 16, 17, 18, 19-A, 19-B, 20, 21-A, 21-B, 22, 23, 24-A, 24-B, 25, 26-A, 26-B, 27, 28, 29, 30, 31-A, 31-B, 32, 33, 34-A, 34-B, 34-C, 35-A, 35-B, 36, 37-A, 37-B, 38-A, 38-B, 38-C, 38-D, 39, 40, 41-A, 41-B, 42, 43, 44, 45-A, 45-B, 46, 47, 48, 49, 50, 51-A, 51-B, 52, 53, 54, 55, 56, 57-A, 57-B, 57-C, 58,

59, 60-A, 60-B, 60-C, 61, 62, 63-A, 63-B, 64-A, 64-B, 65-A, 65-B, 65-C, 66-A, 66-B, 67-A, 67-B, 68-A, 68-B, 68-C, 69-A, 69-B, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80A, 80-B, 81-A, 81-B, 81-C 82-A, 82-B, 83-A, 83-B, 84, 85-A, 85-B, 86, 87-A, 87-B, heretofore marked for identification in this case, after having been identified by the Witness Post.

Mr. Weisman: I suppose you are going to indicate which each one of those is?

Mr. Haycraft: That will show in the record, yes.

Mr. Weisman: Very well. No objection.

Examiner Bennett: Without objection, they will

2387 be received in evidence.

(The documents referred to, heretofore marked for identification Commission's Exhibits 13-A, 13-B, 13-C, 13-D, 14-A, 14-B, 15, 16, 17, 18, 19-A, 19-B, 20, 21-A, 21-B, 22, 23, 24-A, 24-B, 25, 26-A, 26-B, 27, 28, 29, 30, 31-A, 31-B, 32, 33, 34-A 34-B 34-C, 35-A, 35-B, 36, 37-A, 37-B, 38-A, 38-B, 38-C, 38D, 39, 40, 41A, 41-B, 42, 43, 44, 45-A, 45-B, 46, 47, 48, 49, 50, 51-A, 51-B, 52, 53, 54, 55, 56, 57-A, 57-B, 57-C, 58, 59, 60-A, 60-B, 60-C, 61, 62, 63-A, 63-B, 64-A, 64-B, 65-A, 65-B, 65-C, 66-A, 66-B, 67-A, 67-B, 68-A, 68-B, 68-C, 69-A, 69-B, 70, 71, 72, 73, 74, 75, 76, 77 78 79, 80-A, 80-B, 81-A, 81-B, 81-C, 82-A, 82-B, 83-A, 83-B, 84, 85-A, 85-B, 86, 87-A, 87-B, were marked as exhibits and

2388 received in evidence.)

Mr. Haycraft: Mr. Examiner, at this time I will ask for an adjournment until 9 o'clock Eastern Standard Time, 10 o'clock Daylight Savings Time, in Courtroom No. 5, Federal Building, Boston, Mass., on Monday of next week. I have nothing further to present to-day.

Examiner Bennett: It is now 12.40. Have you any witnesses to present this afternoon?

Mr. Haycraft: No, sir.

Examiner Bennett: Why are you wasting all of this time?

Mr. Haycraft: The witnesses on this particular part of the case have proceeded so rapidly that I have exhausted my panel. I have no further witnesses that I can present at this time.

Examiner Bennett: I will give you an adjournment if you do not have any witnesses to present, but I do not think we ought to waste time in this way.

Mr. Weisman: Where do we meet on Monday?

Mr. Martin: Court Room No. 5, Federal Building. 2390

Mr. Weisman: If your Honor please, I should like to request that you have that start at 10.30 o'clock A. M. Daylight Savings Time. I expect to fly to Boston and the plane leaves here so late that it will not get there before that time.

Examiner Bennett: We will adjourn to reconvene in Courtroom No. 5, Federal Building, Boston, Mass., at 9.30 o'clock A. M., Eastern Standard Time.

(Whereupon, at 12.45 o'clock P. M., July 24, 1936, the hearing in the above-entitled matter was adjourned.)

2391

Court Room No. 5, Federal Building, Boston, Mass.,
July 27, 1936.

Met, pursuant to adjournment, 9.30 A. M.

Before: JOHN W. BENNETT, *Examiner.*

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

2393 MILTON C. WEISMAN, Esq., GEORGE FELDMAN, Esq., and HERBERT S. KELLER, Esq., appearing for the Fashion Originators Guild of America, Inc.

PROCEEDINGS.

Examiner Bennett: Be in order, please. This hearing is reconvened to Boston, Mass., from New York, N. Y. You may proceed, Mr. Haycraft.

Mr. Haycraft: Mr. Seegal, will you take the witness stand, please.

2394 S. M. SEEGAL was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. Give your full name, Mr. Seegal, please. A. Samuel M. Seegal.

Q. "M" like in Morris? A. Yes, "M" like in Morris.

Q. Where do you live, Mr. Seegal? A. 630 Dedham Street, Newton Center.

Q. Massachusetts? A. Massachusetts.

Q. Your occupation? A. Assistant to the merchandise manager and vice-president of Filenes—William Filene Sons Company.

Q. In what business is the William Filene Sons Company engaged? A. In the retail store business.

Q. Where does it have its place of business? A. 436 Washington Street, Boston.

Q. Does it have more than one store? A. It has a subsidiary corporation, R. H. White Company, also the Continental Clothing Company of Boston, and then it has 2396
branch stores in several cities and towns in New England, such as Portland, Maine, and so forth.

Q. Will you name those other cities? A. Portland, Maine; Worcester, Massachusetts; Hyannis, Massachusetts; Falmouth, Massachusetts; Providence, Rhode Island; Northampton, Massachusetts; Wellesley, Massachusetts. I may have missed one or two more, small shops.

Q. These branch stores, such stores as you refer to, in these other cities, what type of merchandise do they sell? A. They sell primarily garments and, in a small way, accessories. They do not carry all the lines carried in the major store, but they do carry the outstanding lines.

Q. That is, what, ladies' or men's garments? A. With the exception of the Worcester store, they only carry 2397
ladies'. By "ladies'," I mean women's, misses', and girls', and so forth. The Worcester store is the only store that carries the men's garments.

Q. Now, your main store, of course, carries a full line? A. The main store carries a full line of women's, misses', children's and men's clothing, outer garments, intimate wear, and accessories, and so forth. Primarily, it is a large specialty store as contrasted with the department store which would carry piece goods, and so forth.

Q. The R. H. White Company you mentioned a few moments ago, that is a department store? A. That is a department store, and that carries a full line.

Q. What are your duties with respect to the stores you have named? A. My duties are as staff assistant to the merchandise manager and to the vice president.

Mr. Weisman: Would your Honor ask the witness to be good enough to mention this man by name? He says "merchandise manager and vice president." He has repeated it twice, and the name of the man to whom he is the assistant and who is the merchandise manager and vice president, we
2399 would like to have that name.

Mr. Haycraft: Mr. Examiner, I think proper opportunity will be given to counsel for the respondent on cross-examination if he does not have the full details in my direct examination. I do not like to be interrupted.

Examiner Bennett: All right. There isn't any secret about the name, I suppose?

Mr. Weisman: No——

Examiner Bennett: There isn't any secret about the name, is there?

The Witness: As far as I am concerned, there is no secret.

Examiner Bennett: Now, go ahead and give it,
2400 then.

The Witness: The merchandise manager is Mr. Arthur W. Wright.

Examiner Bennett: All right.

The Witness: The vice president is Mr. Louis E. Kirstein.

By Mr. Haycraft.

Q. Will you continue to give the statement of your duties? A. My duties are to assist both those gentleman in the general merchandising of the store and about the store.

Q. Do you have anything to do with the buying of ladies' dresses? By "ladies'," I take the same definition you gave a moment ago. A. Yes, we oversee the buying, because the divisional merchandise managers under whom the buyers function report to Mr. Wright who, in turn, reports to Mr. Kirstein.

Q. Who are the merchandise managers for the ladies' dresses? A. There are three divisional merchandise man- 2402
agers for the dresses—one is Mr. Drew——

Q. What department is he in? A. Mr. Drew has charge, in a general way, of the women's dresses, as well as women's coats and misses' coats.

Q. Any particular price range? A. He has all price ranges in women's merchandise.

Q. All right. A. Mr. Gross has charge of the corresponding misses' departments, generally speaking. The sportswear departments, women's and misses' sportswear, are under Mr. Zerkowsky.

Q. Now, in what ways, if any, do you contact these three individuals you have mentioned as merchandise managers? A. These men are seen on an average of several times a day in connection with the performance of their duties. All 2403
merchandise which they buy must be approved. The orders for such merchandise must be approved and confirmed by the merchandise office, and any other of the mechanics of buying, such as that, come directly under the merchandise office.

Q. Just what is your relation to the— A. To approve such orders, disapprove such orders, to aprove returns of merchandise, cancellations, or any other of the mechanics of keeping—of getting the supply of merchandise into our

business. We also naturally see them about the conduct of the business, the course of the business, and anything else that would have to do with the operation of their department.

Q. Now, what, if anything, did these buyers have to do with the sales end of the business in their departments? A. The buyers are responsible for the getting of the business, getting the sales. That is their prime responsibility, of course, because, naturally, without the sales there cannot be any profits, and that is what they are hired for. The divisional merchandise managers, naturally, have responsibilities, see that the buyers under them get the sales and
2405 profits and they, in turn, are responsible to Mr. Wright whose job it is to see that the main store gets the sales and profits.

Q. In your supervision of the activities of Mr. Drew, Mr. Gross, and Mr. Zerkowsky, do you exercise any supervision over the sales end as well as the buying end? A. Oh, yes.

Q. Do you check up from time to time to see the trend of sales? A. We check daily to see how the individual departments under their supervision are doing, through the daily sales sheets.

Q. Now, are you familiar with the Fashion Originators Guild of America, Inc., the respondent in this case? A. Yes.

Mr. Weisman: Just a moment. I object to the
2406 form of the question. "Are you familiar with?" I do not know how one is familiar with a corporation, or what it is. Does he mean has he heard of it, or does he know of it? If that is so I have no objection. I certainly——

Examiner Bennett: I presume that will develop as the witness is further questioned; overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. When did you first learn of the Fashion Originators Guild of America, Inc.? A. I first learned of the Fashion Originators Guild, that is some three or four years ago when we received a communication——

Q. Two or three years ago. Can you make it any more definite than that? A. I think I would have to consult my records.

Q. All right, consult them, you may do so. A. (Witness refers to papers.) I could not make it any more definite. I believe it was probably around 1932 or 1933.

Q. During that period of time that you first learned of the National—of the Fashion Originators Guild of America, Inc., until April, 1936, did you cooperate in any way with the Guild in its activities? A. We cooperated with the Guild in its activities up to the time that we were red-carded, which was in February, 1936. 2408

Q. First, I will ask you what form the cooperation took that you referred to with the Guild; and by "you" I refer to the Filene Store? A. The Guild explained to us their program of eliminating style piracy in its form as it existed in the dress business primarily. We were in sympathy with eliminating style piracy in the dress business. However, we had certain reservations in joining with them in eliminating style piracy, the chief reason, or, rather, the chief reservation being that we could not agree to anything which would leave us in a bad competitive position. We joined with the Guild, or signed—we submitted a letter of cooperation to the Guild in which we—— 2409

Q. After you submitted this letter, then what, if any, cooperation did you give to the Guild? A. I should like to make that clear, the letter contained——

Mr. Weisman (interposing): Leave the letter out. The letter is the best evidence of what was in it.

By Mr. Haycraft.

Q. Just tell us what you did. A. We cooperated with the Guild through the mechanics of their organization as far as—we put a stamp on our orders of merchandise——

Q. (Interposing) You put a stamp on your orders for merchandise? A. Yes. That stamp that we put on our orders for merchandise saying that, in effect, if this merchandise were found to be, or was copies——

Mr. Weisman: I object to that. Why not show him the stamp? Do you have the stamp here? That would be the best evidence of what it contained.

2411 Mr. Haycraft: What exhibit number is that?

Mr. Weisman: That is Exhibit 306 for the Commission, as I recall.

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 306, and particularly the green ink stamp thereon. I will ask you if that is the stamp that you refer to? A. I believe we had our own stamp which was slightly different in wording from this stamp, but that is exactly—rather, it is substantially the subject matter of the stamp, but those words—I believe it is not in the exact form as our stamp.

Q. Would you mind repeating that answer? I did not hear you. A. I believe we had our own stamp which was slightly different in form from this stamp, but this was
2412 substantially the subject matter of the stamp; that is, I believe it is in approximately the same form, but it is not exactly the same stamp.

Q. All right. You placed that stamp, whatever it was, on the order. We will get the stamp later. What happened after that? A. When merchandise came into our store, if it developed or happened that that merchandise was copies of Fashion Originators Guild numbers of

dresses, and it was called to our attention, we would return that merchandise to the Fashion Originators Guild as requested to do so by their shopper——

(There was a discussion off the record.)

A. Thank you for calling my attention to that error—we would return it to the manufacturer of that merchandise.

By Mr. Haycraft.

Q. What about the balance of the testimony about the shopper?

2414

Mr. Haycraft: Read the latter part of the answer before the discussion.

(Latter part of the answer read.)

By Mr. Haycraft.

Q. Who was their shopper? A. The name of the shopper was Miss Katherine Brady, who worked for the Fashion Originators Guild, Inc., and covered Boston; I do not know where else.

Q. Did you ever meet Miss Brady? A. Yes.

Q. Have you ever met Miss Brady in the store in the course of her duties? A. I have seen her since and before.

Q. What was her activity in your store in the course of her duties—what was she doing? A. She was shopping these departments to see whether we had any copies of Fashion Originators Guild of America, Inc., merchandise. 2415

Q. What departments did she shop? Did she shop those to which you have referred a while ago? A. She shopped the garment, all garment departments.

Q. How many did you have, the three that you named here? A. The departments supervised by the three divisional merchandise men.

Q. When did Miss Brady—I withdraw that. When did you first observe Miss Brady carrying on her duties in that respect? A. In the—the first time that I observed her was in the fall of 1935.

Q. Can you give us the month? A. I believe it was somewhere around September or October that I observed her.

Q. Are you now in a position to testify as to the instances, or the number of instances, or the number of garments that were returned to manufacturers in the manner that you have described? A. Yes.

Mr. Weisman: I object to that. That is an obviously unfair question, and I ask that it be stricken
2417 out. I submit that this witness should be permitted to testify to such facts as he knows and not as to what he thinks might have been the fact. I ask that he be allowed to testify only as to such facts as he has in his own possession and is, therefore, properly equipped to testify thereto. It is for the Court to determine whether he is in a position to testify to those facts. If this witness is permitted to give a conclusion as to what he thinks he is permitted to testify to then the position of the Examiner is usurped and the Tribunal is taken over by the witness, himself. I believe that your Honor made that that same observation, himself, in connection with objections made by Mr. Ballon while we were re-
2418 ceiving testimony in New York last week.

Examiner Bennett: This is different. Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Will you do so?

Mr. Weisman: I object. No proper foundation has been laid for any such opinion of this witness. It is clearly the result of hearsay, does not afford us

2419

an opportunity for cross-examination, is entirely and fundamentally prejudicial to the essential rights of the respondents herein; is incompetent, immaterial, irrelevant, illegal, and has no proper bearing upon the issues in this case; is obviously a collateral matter, and hearsay in its worst form. It combines not only hearsay but a conclusion of the witness.

Examiner Bennett: I have passed upon that before.

Mr. Weisman: If your Honor please, I am objecting now, and addressing my objection to the second question which contains all of the vice of the former question, with many additional and aggravated attendant vices all its own.

2420

Examiner Bennett: I thought I passed upon that before.

Mr. Weisman: No, your Honor, that is an additional question itself springing from the vice of the former.

(The previous question, answer, and pending question were thereupon read.)

Examiner Bennett: You may have your same objection to that.

Mr. Weisman: And the ruling?

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

2421

By Mr. Haycraft.

Q. Answer the question. A. We returned 220 dresses to manufacturers after being requested to do so by the Fashion Originators Guild of America, Inc., up to the time that we were red-carded. That figure is somewhat approximate. I am sure of the 220. There may have been as many as 230.

Q. You are positive as to the 220? A. Right.

Q. Can you testify as to the time that those returns were made; as to the dates and the occasions thereof? A. Yes.

Q. Can you also testify as to the name of the manufacturer to whom they were returned? A. Yes.

Q. Will you please do so?

Mr. Weisman: Same objection.

Examiner Bennett: Same ruling.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

By Mr. Haycraft.

2423 Q. Answer the question. A. On November 23 we returned to the Silver Palm twelve dresses. On November 25 we returned to the New Emporium twelve dresses. On November 4 we returned to Lombardys twenty dresses.

Q. May I interrupt? A. Yes.

Q. Can you, as you go along, connect these up with the sources and where they are located? A. These sources, I believe, were all located in New York.

Q. City? A. Yes.

Q. Proceed. A. On January 20, this year, we returned to Lok Dress Company fourteen pieces.

Q. Pieces? A. Yes. On December 16 we returned to Classic Company two pieces. On December 10 we returned to the Classic Company three pieces. This is the same company. On January 30 we returned to Laura Lane ten

2424 pieces.

Q. Ten? A. Yes.

Q. On your next date? A. On January 18 we also returned to Laura Lane eight pieces. On February 7 we returned to Laura Lane six pieces. On November 12 we returned to Wil-Mac two pieces. On November 14 we returned to Wil-Mac thirty dresses.

Q. To Wil-Mac? A. No. I beg your pardon. On November 14 we returned to Excellent Dresses thirty pieces. On November 19 we returned to Calmec——

Q. How do you spell that? A. C-a-l-m-e-e—I do not think it is spelled correctly, though, and I will check that later—eight dresses. On November 19 we returned to Al Hartmann five dresses. On November 19 we returned to Better Modes five dresses. On November 25 we returned to Jomax fifteen dresses. On November 25 we returned to Jomax fifteen—twenty-five dresses. This was a separate return to that same company although it was made on the same day. In other words, on one day, November 25, we returned fifteen dresses, and on the same day, some time later in the day or earlier in the day, as the case may be, we returned twenty-five dresses. On December 6 we returned to Feinberg & Weisen seven dresses. On December 27 we returned, also, to Feinberg & Weisen, twenty-two dresses. On November 15—November 5—we returned to Constantines seventeen dresses. I believe that will total up 220 dresses. 2426

Q. Do you recall the occasion when the red carding took place that you spoke of? A. Yes.

Q. You do? A. Yes.

Q. Will you, briefly, testify how you came to first know that you had become red carded and by "you" I mean the Filene Store? A. We received a telegram, I believe a night letter, from Mr. Post, I am not sure of the exact date, that will appear in the night letter; I believe we received in the office on Monday morning—I am not even sure about that—saying in substance—— 2427

Mr. Weisman (Interposing): I object to this witness stating the substance of the document. The document will speak of itself.

By Mr. Haycraft.

Q. You need not mention the contents of the document. What month was it? A. February.

Q. February? A. Right.

Q. Can you give us the date? A. No. I cannot give you the date.

Q. No? A. No.

Q. Can you give the approximate date, whether it was early part or the latter part of February? A. Early—early part of February, we had the second—yes, I should say the first—the early part of February. Do you want me to tell what it said?

Q. No. You cannot tell what the telegram said or Mr. Weisman will object to it.

Mr. Weisman: I certainly will.

2429 *By Mr. Haycraft.*

Q. The telegram is the best evidence of what it said. I will ask you upon receipt of the telegram what, if anything, you did? A. Upon receipt of the telegram it was considered by the management of our business as being——

Mr. Weisman (interposing): I object. I move that that be stricken out, "It was considered by the management of our business"; it is irresponsive, incompetent, immaterial, irrelevant, illegal, and prejudicial to the rights of respondent. He was asked what he did and not what somebody considered. We cannot be the subject of conclusions here.

Examiner Bennett: I will let him answer.

2430 *By Examiner Bennett.*

Q. Can you answer what you did and then if you want to bring out why you did it we will consider that later. A. Upon receipt of the telegram I took this up with the management of our business.

By Mr. Haycraft.

Q. Then, what did you do? A. We did nothing about it. Q. No? A. No. We did nothing with it. That is, I mean

to say, we did not make a reply, and considered the telegram. We did not reply to the telegram. We were notified through our New York office that they believed that we were red carded.

Mr. Weisman: I object as stating a conclusion and hearsay.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Did you make any attempt to—strike that out—what was the next occurrence, either serially or chronologically? A. The next occurrence was that all buyers of ours notified 2432
us that they were denied access to these various manufacturers.

Q. Just stop right there for a moment. Who were your buyers at that time? A. I cannot give you the names of the buyers who were denied access except by saying that they were practically all denied access as they went to the manufacturers to purchase goods.

Q. Can you testify as to the names of Guild members from whom you have been purchasing ladies', women's, children's dresses—ladies', women's, misses' dresses prior to the time you were red carded? A. Yes.

Q. Will you do so— A. Yes.

Q. Have you a list there that you can use for that purpose? A. I have a list here. 2433

Q. You have? A. Yes.

Q. Was that prepared pursuant to your direction? A. That was prepared that way; yes, sir.

Q. Are you satisfied it is correct? A. Yes.

Mr. Haycraft: I offer this in evidence and ask that it be given the Commission's next exhibit number, which I think will be Commission's Exhibit No. 357.

Mr. Weisman: I have no objection to the admission of this list in evidence if it were not for the fact that the form of the question which I believe is in a form inadvertently made, which renders it, in my opinion, ineligible for admission. The question has been propounded "Have you a list of members of the Guild with whom you did business?" Quite frankly this witness does not know first hand that all of these members are members of the Guild. It is obviously impossible, and, of course, I knew in looking over the list that some of them are not. If it is offered as a list of people with whom he did
2435 business and then for that purpose we can independently show from the record which of them are members of the Guild, I have no objection, but in the form of the question which would seek to conclude that all of these people are members of the Guild, I object because this witness can only believe that these men are members of our Guild. I object to that when it is offered under a question in that form unless it is limited to show some of the people they were doing business with at that time, and as as to perhaps he had certain beliefs.

Examiner Bennett: Have you checked it with the Guild management and know that your statement is correct as to that?

2436 Mr. Weisman: Yes, sir. I called them over and we checked over this list and they observed certain ones immediately, so they tell me.

Mr. Haycraft: Of course, the question is "at the time," Mr. Examiner. As I understood the testimony, it was at the time the exhibit was prepared, or at the time I inquired about it. There may have been some changes in the Guild membership since that time.

By Mr. Haycraft.

Q. What date was this list prepared upon, or as of? A. This was prepared around April, some time around April of this year. At that time—do you want me to go any further?

Q. Well——

Mr. Weisman: I object. He has answered the question.

Examiner Bennett: Go to something else.

By Mr. Haycraft.

Q. Were they, to the best of your knowledge and beliefs, 2438
members of the Guild? A. To the best of my knowedge and belief at that time, why, they were members of the Guild, yes.

Examiner Bennett: Very well.

Mr. Haycraft: With that understanding of it, I offer it in evidence.

Examiner Bennett: It is not vital as to that now?

Mr. Weisman: It is only his understanding, and in that event I have no objection because I think it is clear, now, as to what the situation is.

The Witness: I would like to change that answer. May I change that answer; to the best of my knowledge and belief these were members of the Guild at 2439
that time, or had been members of the Guild prior to that date.

Examiner Bennett: You may make that statement for the Guild. The exhibit is received in evidence.

(List of Guild Houses with whom the William Filene Sons Company did business during 1935-1936 was marked Commission's Exhibit 357, and received in evidence.)

By Mr. Haycraft.

Q. You were testifying previously as to the fact that certain of your buyers, I believe you said all of your buyers, were denied access to certain of the manufacturers after you were red carded. Do you recall any of the firms to which they were ever denied access, and which buyers were denied such access?

Mr. Weisman: I object. This witness could not possibly know except by what the buyers told him as to what happened when they called upon anybody, and upon whom they called. I submit to your Honor that I do not want to unduly delay this matter by objecting, but this seems to me to be wholly improper. Such testimony as this denies to us a fundamental and vital right in the way of cross-examination or in presenting evidence upon our part. Furthermore, the witness has just testified in his own direct testimony that he does not even remember the names of the buyers nor upon whom they called. Now, he is going to testify as to what the buyers said to him about something which is alleged to have taken place without his presence and without his knowledge.

2441

Examiner Bennett: Of course, I will ask you to bring out in that sort of a question the time when this is supposed to have taken place, and who was present.

2442

Mr. Weisman: If the question was read I am sure you would see the vice of it.

Examiner Bennett: Read the question.

(Question read as follows: "Q. You were testifying previously as to the fact that certain of your buyers, I believe you said all of your buyers, were denied access to certain of the manufacturers after

you were red carded. Do you recall any of the firms to which they were ever denied access, and which buyers were denied such access?")

The Witness: Yes, I do.

Mr. Haycraft: Your Honor, after the reading of the question just now the witness has stated that he does know that. Inasmuch as he has stated that he has the knowledge with which to answer it, I submit the objection is ill taken.

By Mr. Haycraft.

Q. Tell what buyers there were, and so forth; give the names of the buyers and then name the manufacturers if you can. 2444

Examiner Bennett: I overrule the objection.

Mr. Weisman: May I have an exception to all of this line of testimony?

Examiner Bennett: Exception granted.

A. Miss Morrissey was denied access to the firm of Marcus in Boston.

By Examiner Bennett.

Q. That is, she so stated to you? A. She so stated to me, and Mr. Marcus, himself, so stated to me.

By Mr. Haycraft. 2445

Q. Next? A. Miss Peddington and Miss O'Brien were denied access to the firm of Bernard Appel in Boston. Miss Kolensky was denied access to the firm of Weinstein-Entin, Boston, Mass. Those are the cases I know of from both sides, both from the buyer side, the buyer telling me, and from the manufacturer's side, the manufacturers telling me. The other cases from New York, the buyers have

told me, I do not recall the names of the manufacturers that each buyer told me in New York. They were, however, their regular sources of supply.

Q. How many buyers do you have in New York? A. What is the question?

Q. How many buyers do you have in New York? A. I would like to make that clear. These are our buyers in Boston who went to New York.

Q. Those were your buyers in Boston who went to New York to buy? A. Yes, and information—pardon me. We have no buyers, as such, in New York.

Mr. Weisman: What was the original question?

2447

Q. (Question read.) A. We have no buyers, as such, in New York. We have shopping scouts, resident people in our New York office, who function for the Boston organization, however.

By Mr. Haycraft.

Q. Well, I will ask you whether or not you had any orders outstanding at the time that you were red carded? A. We did.

Q. You did? A. We did.

Q. Were they filled? A. What?

Q. Were they filled? A. They were filled under a——

Mr. Weisman: I object. I submit that the answer "They were filled" is sufficient.

2448

A. (Given concurrently with the objection) —under a court order or agreement.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Was there any delay in the filling of the orders? A. Yes, sir.

Q. How long was the delay? 2449

Mr. Weisman: I object to it as incompetent, immaterial, and irrelevant; prejudicial to the rights of the respondents herein, and a conclusion of the witness. Let him state what happened and then the Court can determine whether or not they were delayed. Again, counsel is asking the witness to usurp the position of the Federal Trade Commission and of your Honor, the Examiner.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

2450

By Mr. Haycraft.

Q. Answer the question. A. What was the question?

Mr. Haycraft: Read the question.

Q. (Question read.) A. There was a delay in the filling —I am not sure what you mean by that question—if might explain——

Mr. Weisman (interposing): I submit that the witness should be advised if he does not understand the question he does not have to answer the question. He does not have to do anything unreasonable. If he does not understand the question I would ask that he be asked another question.

2451

Examiner Bennett: If you do not understand the question just do not answer it. Let counsel ask you another question. Give him time to revise his question.

The Witness: Yes, sir.

By Mr. Haycraft.

Q. How long does it usually take; and, what is the customary thing as to the length of time after the order is placed until it is delivered or filled?

Mr. Weisman: I object as incompetent, immat
rial, and irrelevant; no proper foundation has be
laid for this question; this is an improper questio
It does not lay the basis for a proper cross-examin
tion by the respondents, and is inimical to the su
stantial rights of the respondents herein. To deli
eate this matter further, different types of dress
take different times to fill I think the Court w
take judicial notice of the fact that it depends up
the manufacturer's condition; it depends upon t
value of the account; it depends upon the type
dress; it depends upon the price of the dress;
2453 depends upon the time of the year; it depends up
the condition of the market as to supplies; it d
pends upon the condition of the market as
deliveries and demand; also, on all of these thin
and other things. To have this man testify as
somebody else's business, for another thing,
manifestly improper. He cannot know as to t
multifarious conditions that obtain in another ma
business, and it is improper as a question; and, fu
thermore, it has no relevancy or probative weight
value if the question were answered.

The Witness: I believe I can answer the que
tion.

Mr. Haycraft: Mr. Examiner, the witness sa
he can answer the question.

2454 Examiner Bennett: Overruled. You may answ
it if there is any such time as that.

The Witness: The time of filling orders in o
type of business varies anywhere from three da
perhaps, or immediately, if there is stock on han
upto about four to six weeks.

Mr. Weisman: I object and move to strike. T
answer is clearly too vague to be of any value, a

as it stays in the record it constitutes an unanswerable menace to the substantial rights of the respondents.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. When were these orders filled? A. These orders were filled about two to three weeks, because it took two to three weeks after we were red carded for the agreement, the court agreement on that subject to be effectuated.

Q. Did you attempt to place any reorders? A. We attempted to place reorders—after we were red carded? 2456

Q. Yes. After you were red carded, did you attempt to place any reorders? A. We attempted to place special orders. We attempted, originally, of course, to find out whether the manufacturer would ship us merchandise on reorder, and we were quickly told they would not. We then attempted to place special orders, because we had size No. 36, or No. 38, or No. 40 in dresses in stock, and a customer would come in for size No. 42, who was the size No. 42, and she saw a dress and as a regular procedure in our business she asked us if we would get her that size——

Mr. Weisman (interposing): I ask that all of this evidence be stricken out. I also, at this time, wish to call the Court's attention to the inherent vice of all this testimony; that is, that we have all 2457 of this being put in and it is not what this witness knows but it is what somebody else has said or what somebody else has done, or what somebody else knows, and then this witness is just testifying generally concerning something that he did not have first-hand knowledge of. It is his conclusion from what somebody else told him. Somebody went to New York. Somebody talked to a customer. He

did not place these reorders. Somebody placed them. He has said those somebodies are here in Boston and would certainly be available to testify. We are denied the right of cross-examination.

Therefore, I ask that all of this sort of testimony by this witness be stricken out, and I ask that the examining attorney be requested to confine himself—the man who is conducting the examination for the Commission in chief—to confine himself to matters of which this witness has direct knowledge. I submit this type of examination is entirely unfair, and highly prejudicial to the substantial rights and

2459 interests of our client. We are absolutely blocked out from any reply to such generalizations, speculations, conclusions and interpretations of the speculations, conclusions and opinions of others who are not even here.

We are here to meet evidence, but not the thoughts of this gentleman or his speculations or his beliefs or interpretations or conclusions or opinions or prejudices, if you will, or other colorings which he may have placed upon what somebody else told him, which, in turn, may be subject, and undoubtedly is subject to the same objections.

Mr. Haycraft: Is it necessary for me to answer that, if your Honor please?

Examiner Bennett: No.

2460 Mr. Haycraft: I think, Mr. Examiner, you are sufficiently familiar with the rules of our practice before the Commission to make a ruling upon that without my saying anything.

Examiner Bennett: As a general objection to this line of testimony, the Examiner overrules it. I think that this witness being vice-president and an executive of this concern is entitled to state what was told him by his employees in the regular course of his business.

Mr. Weisman: He is not the vice-president of this company.

Examiner Bennett: —dealing with practices and styles and all of that sort of thing, things that he is testifying about. In this Court it is not necessary to call all of these people in order to get that type of information; it is not necessary for him to have, personally, been there—to have had a personal transaction. He is testifying from things received in the regular course of business, information secured in the regular course of business which is perfectly good testimony.

I will overrule objections on the hearsay basis to 2462
testimony of this sort.

Mr. Weisman: Is it overruled upon the other bases I raised?

Examiner Bennett: Yes.

Mr. Weisman: May I have an exception?

Examiner Bennett: Granted.

By Mr. Haycraft.

Q. Answer the question. A. Where was I——

Mr. Haycraft: Read the answer so far as given.

(Answer read as far as given.)

A. —we would ask the manufacturer to ship or order the dress and he would ship us that dress. We ordered 2463
these dresses on special order and the answer would be "no." We, therefore, disappointed the customer.

We had a similar experience with a wedding dress which caused great hardship.

By Mr. Weisman.

Q. What do you mean; the girl could not be married unless she could buy a dress from Filenes? A. We had half of the dress and the other half we did not have.

Q. You do not mean the girl had to have two wedding dresses? A. We had half of the bridesmaids' dresses. We did not have the other half which was very serious to the person getting married.

Q. Did she, as a matter of fact, get married? A. I think she did.

By Mr. Haycraft.

Q. Since February, 1936, have you been able to purchase any more garments from manufacturers from whom you had been buying who were members of the Guild? A. We have not.

2465 Q. When was the last time you made an attempt to do so? A. We ceased attempting to buy dresses——

Mr. Weisman (interposing): May we have an exception to that? The examining attorney asked him the last time he tried to buy. Now, he is telling us when he ceased attempting to do so.

Examiner Bennett: He is telling you what was asked, I believe.

By Mr. Haycraft.

Q. Can you answer my question directly? A. What was the question?

Mr. Haycraft: Read the question.

2466 (Question read.)

A. We attempted time after time—I am just trying to tell you—if I am answering it wrong let me know.

Examiner Bennett: The objection is overruled. You may answer.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

Mr. Haycraft.

Q. Answer the question. A. May I have the question ain?

Q. Yes.

(Question read.)

A. We attempted to buy dresses for a short time, about week or two, from members of the Guild in order to find t whether or not each and every member that we did siness with would do business with us or not in spite of e Guild red carding. I should say that that lasted maybe out two weeks just to find out how earnest they were.

2468

Q. What did you—what effect did that have, the inility to get dresses or garments from these Guild manucturers, upon the business of William Filene Sons Comny as you observed it?

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant, calling for a conclusion of the witness' mind, for an operation of his mind, for his opinion, and his interpretation upon certain acts, things and so forth which this Court is here to decide. He is usurping the very function of the Commission. He can tell us what happened, but after all the effect is something that is to be attributed, or might be attributed to any number of things. If this witness is going to state the effect of certain things, then there is no use of the Commission hearing this case.

2469

Examiner Bennett: I will ask you to lay the proper foundation.

Mr. Haycraft.

Q. First, I will ask you this question: What range of iced dresses did you buy from the members of the Guild?

We bought dresses retailing as high as——

Q. (Interposing) No, I do not want the retail prices. Give us the wholesale prices. A. Wholesale?

Q. Yes. A. From the lowest price that we have in their membership, it was around—by various stages, we have some at $3.75, some of them.

Q. When did you have that? A. When?

Q. Yes. A. Towards the end we had that price. Up to when the Guild—well, just answering the question, up to, in our field, about $30 or so, in a very small way.

Q. What was the bulk of the dresses—at what price were the bulk of the dresses? A. The bulk of the dresses we bought were around a wholesale price of $6 through
2471 $10, the largest part of the business is $10.75; substantial business being done at $16.75, but not as much, naturally, as $10.75. The lowest big price that we do a substantial business at is $16.75.

Q. Now, to your knowledge, how long a period of time did the Guild include in its membership the lower brackets; that is, the $4.75 to, well, let us say, to below $10.75?

Mr. Weisman: Objected to as immaterial, it is not in this witness' knowledge, the facts will be elicited in this trial.

Examiner Bennett: Read the question.

(Question read.)

Mr. Weisman: I object to that as being wholly immaterial. The facts will be developed. I mean,
2472 as a matter of fact, I call your Honor's attention to the facts as already developed, in that all of the by-laws and memberships and everything is now in evidence.

Examiner Bennett: I will overrule the objection and let the witness answer.

Mr. Weisman: Exception.

The Witness: What is the question?

(Question read.)

A. We were—only in the late fall of 1935 did the Guild bring in to their membership low-priced—those low-priced manufacturers.

By Mr. Haycraft.

Q. But prior to that was the $10.75 the lowest-priced dress, wholesale price, that you paid to your Guild manufacturers? Or were there some $8.75? A. Well, some were around that range.

Q. Now, were these dresses that you bought from Guild members sold in all three departments that you have referred to in your testimony, women's, misses' and sportswear? A. Yes. 2474

Q. Have you made any study of the business of Filenes in these three departments of the dress business to determine the effect that the inability of Filenes to buy dresses from members of the Guild had had upon the business of these departments?

Mr. Weisman: Objected to as incompetent, immaterial and irrelevant, and no proper foundation laid; calling for a conclusion of the witness, and based upon an hypothesis of which there is no proof of the truth in this record.

Examiner Bennett: Overruled; he may answer.

Mr. Weisman: Exception.

By Mr. Haycraft. 2475

Q. What investigations, or what study, did you make? A. We—I participated in the study which was made——

Mr. Weisman: May we have the extent of the participation in the record so it may appear clearly what this witness knows about this thing?

Examiner Bennett: Yes.

Mr. Weisman: He says, "I participated." That might mean he walked across the room when someone was thinking about it.

Examiner Bennett: Yes, go ahead.

A. My immediate superior, Mr. Wright, and I, on April 11 decided we wanted to find out just how seriously our business was being affected by the red carding, by our being denied access to our regular sources of supply——

Mr. Weisman: May it please your Honor, I certainly deprecate interfering or interrupting the witness, but I submit to your Honor when he starts out
2477 and says, "Mr. Somebody and myself decided that we wanted to do this, that, or the other thing," we have an improper piling up in the record of something which is entirely incompetent.

Examiner Bennett: I think that is what you asked for, Mr. Weisman.

Go ahead. Objection overruled.

Mr. Weisman: Exception.

(Answer read.)

A. (Resumed) We took the various departments and made a study of how those departments had been doing prior to the red carding, how those departments had been doing subsequent to red carding, in conjunction with the figures
2478 of the store as a whole, so that we would have a proper guide to whether or not business was bad in those departments, because, say, the weather was bad or something else, and the many reasons that may affect business, and we proceeded on that basis.

The study which we made convinced us that we had a loss of business up to that time, April—that is through April—convinced us we had loss of business of approximately $100,000. In order to check the accuracy of our

estimates we asked the three merchandise managers whom I have already referred to, to make an independent study, with no knowledge whatsoever of our study, as we did not tell them our conclusions.

We further asked them in making their study to list the actual items of merchandise which they found they could not buy in the new sources of supply that they had to go to, so as just not to deal with the figures but to deal actually with items of merchandise. They worked this out with their buyers, and their study checked so closely with ours that we felt that the $100,000 figure was a good and conservative estimate.

In addition, of course, to the effect on the sales volume, 2480
we felt that there were other serious effects on our business, for example, being used to dealing with certain definite sources of supply we knew how they made their merchandise, we knew what types of merchandise they made, would fit, and so forth, and sell in our store.

In experimenting with new sources of supply we had the problem of mark-downs, because not being used to these manufacturers, new ones, most of whom were not anywhere near as good sources of supply as the Guild manufacturers, we had evidence that our mark-downs were being increased through this experimentation.

The only other effect that we felt on our business which we could not prove the figures, was loss of good will. For example, we had people—we have a series of shops in our 2481
store. One shop, for example, the French shop, where we have the highest-priced merchandise, primarily dresses, and, to a smaller extent coats and suits, women's and misses'. We found that people who used to come and buy most of their wants in that line of merchandise in our French shop could not find the sort of merchandise that they were accustomed to getting, certain so-called high-style merchandise. These people would leave us and go to our competitors for merchandise. Not only did we lose

their business, but obviously we felt, at least, that if a woman would not buy, or could not buy a high-priced dress in our store, missing the trip to the store she would probably avoid buying a high-priced pair of gloves, or any of the other types of merchandise she might buy on a trip to our store. So we felt that that good will was costing us a great deal in reputation and money, but we could not prove that, of course, mathematically, the good will aspect, and we had some other incidents that hurt our good will, which we quickly controlled, however, we believed, and that is not being able to keep secrets in our business, and most businesses are unable to, and we found that our
2483 sales people were excusing our stocks to the customers by saying, "Well, the Fashion Originators Guild has stopped us from getting merchandise; but we have hopes that will soon be corrected," and so forth, and so forth. They apologized for our stock, which was quite serious.

We had one case that I know of where we had a sales person from another store comment, "You cannot get that kind of merchandise at Filenes on account of this Guild thing." Because, you know, those things were deliberate, we felt sure, on the part of our competitors, but that will happen in a big business when you have a lot of people.

Q. Now, Mr. Seegal, one other matter I wish to ask you about. Prior to the early fall of 1935 had you been buying any merchandise from manufacturers who were not mem-
2484 bers of the Guild; that is, lower-priced merchandise: did you? A. Oh, yes.

Q. Was it at that time that you started to put in this stamp that you refer to in your earlier testimony, the warranty stamp? A. We put the stamp on right after we joined up with the Guild, became a co-operating retailer, I believe, is the expression.

Q. When was that? A. I haven't the correspondence here, so I could not give you the exact date.

Mr. Weisman: The early part of 1933, was it not?

The Witness: I believe it was some time in 1933.

By Mr. Haycraft.

Q. I believe in your recital of the instances where you have returned garments to manufacturers, they were at the request of the Guild shopper, back in the fall of 1935, were they not? A. The intensive shopping, personally witnessed, it was called frequently to my attention in the fall of 1935. I do not know when that Guild shopper started to shop, probably some time before that.

Q. Was that the first time that you had been called 2486
upon to make returns under the plan of co-operation? A. Under our plan of co-operation, the only returns which were made were after this shopper called it to our attention, because we did not know—in most cases we did not know about merchandise being copies until she called it to our attention; otherwise, of course, we would not bother.

Q. Now, I will ask you, in that respect, whether or not you did restrict your buying policy after you joined the Guild? A. Yes, sir; we did restrict the buying policy.

Mr. Weisman: I submit that that question is not plain and should be—you mean, you restricted it, in that you sought not to buy copies of Guild merchandise?

The Witness: Yes, sir. 2487

Mr. Weisman: Well, that is all right; that was not plain.

By Mr. Haycraft.

Q. What effect, if any, did that change in policy have upon your business, the business of Filenes? A. At the beginning when we would—the first effect that we noticed was that certain so-called very good styles or "hot num-

bers," which is the technical expression used in the trade, we found that we could not buy those numbers because they were copies of Fashion Originators Guild merchandise, registered dresses of the Fashion Originators Guild, and many a dress, our lower-priced buyers wanted to buy, they could not buy because those manufacturers would not accept the stamp, which would have to accompany the order, knowing already that that dress had been registered with the Fashion Originators Guild, so that they passed up some of these very good styles because they could not buy them in accordance with our agreement with the Guild. They had to buy other styles which, in many cases, to those buyers, appeared less desirable.

2489 Q. Can you, at this time, testify as to the manufacturers that you refrained, or requested to refrain, from buying from, that you had been buying from prior to the Guild agreement?

Mr. Weisman: I object to the form of that question. I think the witness sees the vice, the same vice in it that I did. He has not testified that he refrained from buying from any manufacturers, but he testified he refrained from buying certain numbers from certain manufacturers because the numbers were copies of Guild merchandise.

Mr. Haycraft: I think that is correct. I withdraw the question.

2490 *By Mr. Haycraft.*

Q. Do you have in mind any particular manufacturers that you had the experience with that you refer to in your last answer? A. Yes, sir.

Q. What manufacturers? A. Lombardy is one of them. There are two others. I cannot remember their names right now—where we did not buy merchandise, certain styles that we were particularly interested in, because of that agreement.

Q. Now, I take it that your testimony refers to the tivities of the Boston store only of Filenes, or does it fer to the branches? A. My testimony refers to the ston store, and the branches, but not the subsidiary rporations.

Q. It does not include the White Company? A. It does t include the R. H. White.

Q. And what is the other, the clothing company? A. e Continental, which is the men's store.

Mr. Haycraft: That is all, Mr. Seegal.

Examiner Bennett: We will have a recess of a few minutes.

Mr. Weisman: Thank you. 2492

(There was a short recess taken.)

oss-examination by Mr. Weisman.

Q. Mr. Seegal, in connection with this study that you ve made, or that you made in collaboration with Mr. right, did you have occasion to take the sales volume your department, or departments, handling ladies' esses during 1935 and 1936? A. Yes, sir.

Q. And you compared them one with the other? A. s, sir.

Q. And you found that the volume you did in February, 36, was in excess of the volume that you did in Feb- ary, 1935? A. I couldn't answer that question without udying the records. 2493

Q. Well, is that a vital and important matter in your tempt to ascertain the importance of this thing, or as the effect upon your business? A. I——

Q. "Yes" or "no," isn't that important, as an executive this great big store, that you wanted to come to a con- sion as to the effect upon your business? Don't you nk that the volume compared in 1936 with 1935 is of ight? "Yes" or "no," I want to see what kind of expert u are. A. Do I have to answer "yes" or "no"?

Q. Yes, I want to know your opinion.

Mr. Haycraft: I think, Mr. Examiner, the w
ness may be allowed to answer "yes" or "no," a
then explain his answer.

Examiner Bennett: Let him answer.

Mr. Weisman: I will withdraw the question.

By Mr. Weisman.

Q. Did not you deem it of very great importance
ascertain the comparative volume of the various depa
ments doing a dress business during the years 1935 a
1936? A. Yes, I did.

2495 Q. And since you thought it so important, do you r
remember that the volume for February, 1936, exceed
the volume for February, 1935? A. The volume of wha

Q. The volume of sales of dresses in these department
No, do you remember that or don't you? A. I rememb
that some departments were less and some were more.

Q. Well, what do you remember about the sum total
all the dress departments? What do you remember abo
the sum total? A. The sum total of all our dress depa
ments?

Q. Yes. A. Including the ones that were not affect
by the Guild?

Q. Including all dress departments. A. I recall th
had an increase——

2496 Q. In your volume? A. In the volume.

Q. Now——

Mr. Haycraft: Just what time?

The Witness: The month of February.

By Mr. Weisman.

Q. February, 1936, or February, 1935? A. Yes, sir.

Q. Now, you just said to me, in answer to my questi
including those departments that are unaffected by t
Guild. A. Yes.

Q. Now, didn't you say to Mr. Haycraft on your direct examination that all your departments are affected by the Guild? "Yes" or "no"? Did you say that to him? A. I would like to have the question. Some were affected a great deal more than others.

Q. But tell me, a moment ago you said some were not affected at all, did you not? A. If I made that statement, I made that statement. The record will show that.

Q. If you made that statement was that statement correct? A. I should say that all dresses were affected outside—I would say that all dresses were affected, some so slightly as to be insignificant, and some so great as to be major.

2498

Q. Well, let us see. In your direct examination you divided your departments into three classes; you said women's, misses' and sportswear. A. As only for the illustration of the three men who are divisional merchandise managers; but there are many other classifications that could be made of dresses which would be perhaps as intelligent.

Q. I do not want to get something that is as intelligent as something else. I want to know whether when you told Mr. Haycraft on your direct examination that your dress business could divide itself into three classes, to wit, women's, misses' and sportswear, whether that was correct? A. That is correct.

Q. And I also want to know whether or not those three departments do come within the Guild program? A. They 2499 do, I believe.

Q. Well, do you know, or do you believe, now, which is it? A. Well, you say "come within the Guild program." I think you will have to elaborate a bit on that.

Q. Well, I want you to elaborate. You said further to Mr. Haycraft that these three departments were affected—was the word you used, "by the Guild program"? A. Those groups of departments are not departments as such.

Q. Well, let us see, then. All your departments can be made into three major groups, and these three are the three major groups, and in each of these departments of the major group that may be subdivided into smaller subdivisions? A. Correct.

Q. Now, where would you place the misses' sports under your own definition? A. I do not know what you mean, where I place them?

Q. Well, you say that—I will withdraw that question. Would you say that one of the subdivisions is misses' sports department? A. One of the departments.

Q. Yes. A. Within—yes.

2501 Q. Where would you place that? A. You mean under divisions?

Q. Under what grand division? You have given us three grand or large divisions, to wit, women's, misses' and sportswear. Now, you have testified that one of the subdivisions is misses' sports. Now, where would you place misses' sports, under what division? A. I would place that in the division of merchandise where Mr. Zerkowsky, one of the three divisional merchandise managers, has charge.

Q. That is sportswear? A. Correct.

Q. Now, where would you place junior dresses? A. Junior dresses is merchandise where Mr. Gross is.

Q. So you would place that in misses'— A. That is now; it was formerly merchandised by Mr. Zerkowsky and

2502 was merchandised by him at the time that we were red-carded.

Q. I do not care who it is merchandised by. A. I am talking about——

Q. I am trying to get into what divisions these departments fall. Do you not understand that? A. I understand.

Q. Did I ask you anything about under whose direction they are merchandised? A. You did not ask me, no.

Q. All right. Will your try to confine your answers to
questions? A. Yes, sir.
Q. Good. Now, you have a department known as
lisses' Better Dresses," is that correct? A. Yes, sir.
Q. Under which subdivision would you say that falls,
under which division? A. That falls under the misses'
vision, merchandised by Mr. Gross.
Q. Now, you also have a department known as "Misses'
edium Priced"? A. Yes, sir.
Q. Where does that fall? A. Misses' Division, merchan-
ed by Mr. Gross.
Q. Then you have a French shop? A. Yes, sir.
Q. Where would you say that that falls? A. Under the 2504
omen's Division.
Q. Then you have a Women's Gown, where would you
y that falls? A. Women's Division.
Q. And Women's Better Dresses? A. Women's Divi-
on.
Q. And Extra Sizes? A. Women's.
Q. And Medium Priced Dresses? A. Women's Medium
iced Dresses?
Q. No. A. We have Medium Priced Misses', and we
ve Medium Priced Women's.
Q. Well, let us see, taking the figures that one of your
tnesses—the nomenclature that one of your witnesses.
ve——

Mr. Haycraft: I move to strike that. 2505
Mr. Weisman: Well, it might help us.
Mr. Haycraft: I move to strike that.
Examiner Bennett: Read the remark.
(Remark of Mr. Weisman was read.)
The Witness: What witnesses? And where?

By Mr. Weisman.

Q. In the Filene's suit.

Examiner Bennett: Yes, it may be stricken out.

Mr. Weisman: I will withdraw it. I was trying to help him.

Mr. Haycraft: And all the following.

Examiner Bennett: Let us confine it to this man's testimony in this case.

Mr. Weisman: All right.

By Mr. Weisman.

2507 Q. Now, this Guild program, would you say that there were any members of the Guild who were engaged, or from whom you purchased extra sized dresses? A. I couldn't answer that question offhand.

Q. You could not answer that? A. No.

Q. From your Guild experience and knowledge of the business, would you say that the Guild program was likely to affect you with your extra sized business? Never mind what the fact is. A. Yes, I would.

Q. Why? A. Because the style might be brought out, in the regular size, and according to the extra size manufacturers that style might be—and might receive public approval, and so forth, and he might decide that the lines on that particular style were all right with extra sized

2508 women, and having had a lot of public acceptance in the regular sizes, it is natural that the women who are extra size would like to wear that particular dress so he might cater to their particular demands and make that style for them.

Q. I am not asking what he might or might not do. A. I am trying to answer your question.

Q. What I am trying to find out from you as compared to this high style— A. Yes.

2509

Q. —or to the better style, see. I want to know whether or not as compared to the effect it would have on your business in that class— A. Oh, I see.

Q. The Guild program in the extra sizes would have as large an effect, or a smaller effect, or a lesser effect? A. It would have more effect on high style than it would on extra sized ones.

Q. Yes. Would you say that high style is your Women's Gown Shop? A. The French Shop would be the highest style.

Q. The French Shop. In other words, that is the place where the Guild program would be most likely to affect you? A. Yes, sir.

2510

Q. And an extra size department would be the place where it is least likely to affect you as compared to the other departments in your store? A. Between those two there would be more effect in the high, in the French Shop, than on the extra size.

Q. Yes. Do you know what the volume in February, 1935, was in the Women's Gown Department? A. I know, with the assistance of my desk.

Q. Well, take a look and see. A. (Witness refers to papers.) What month is that, February?

Q. February, 1935, what you did in that department. A. (Witness consults record.) What was the question?

(Question read.)

2511

A. This is distinguished from the French Shop when you say "Women's Gowns."

Q. Yes, Women's Gowns. A. In 1935, February, the volume was $7,530.

Q. That is, during the month of February in this department, which was most likely to be affected by the Guild program, of all your departments? A. I do not say that; I do not say that.

Q. All right. I will withdraw that. Which of your departments would most likely be affected—without looking at that—you do not have to look at that. I want to know from your general knowledge. A. Yes, sir. Well, from my general knowledge——

Q. Yes. A. —I should say our French Shop, as I previously stated.

Q. Yes. A. As the department that would be most likely affected.

Q. And next to that? A. And next to that would be the—you are talking just about women's classifications?

Q. Yes, sir; next to that. A. Next to that it would
2513 go in accordance with price, other things being equal——

Q. Well, Women's Gown Department is your most expensive department in the shop, is it not? A. French Shop. I think I said that several times, the French Shop.

Q. I mean, after the French Shop. A. French Shop.

Q. Yes, we have given the French Shop position No. 1. A. All right.

Q. As likely to be affected? A. Yes.

Q. If we give the French Shop your position No. 1, Women's Gowns would get position No. 2? A. Yes.

Q. All right. So that we may not get too involved, let us stop there. Now, you have told us, I believe, that the total volume done—we are taking the total volume done in February, 1935, in the French Shop. A. (Witness refers to figures.) $5,922.

2514 Q. $5,922. Now, in February you were affected by the Guild policy you have testified to, were you not? A. Yes, sir; towards the—well, now, we were affected after we were red carded, and we were red carded——

Q. You were red carded on February 10.

Mr. Haycraft: Mr. Examiner, let the witness testify now on that point.

Mr. Weisman: All right. I will ask him if he knows.

Mr. Haycraft: It is a rather important point.

Mr. Weisman: He is an executive.

Mr. Haycraft: It is a rather important point, Mr. Examiner, when this effect first made itself felt, and I think the witness ought to be allowed to state that.

Mr. Weisman: All right, we will ask him.

Mr. Haycraft: All right, let him state that, now.

Examiner Bennett: All right.

A. The effect was not pronounced at first when we were red carded obviously, because we had a substantial amount of stock in those departments. The effect was 2516
made more pronounced as time went on, as stocks became depleted, as we could not re-order merchandise, so that the effect during the month of February would certainly be much less important than the effect in March, April, to date.

By Mr. Weisman.

Q. Well, do you say that because you know that your volume in every department that was primarily affected by the Guild policy went up in February; is that why you give that answer? A. Well, to my——

Q. "Yes" or "no," please; is that why you gave that answer? A. No.

Q. No. But you do know that in February, 1936, as 2517
against February, 1937, your French Shop showed a substantial gain in volume; do you not know that? A. Yes, sir.

Q. And you know, do you not, that gain in volume for that month was over 10 per cent. of the total business done in 1935 in that department? A. I believe it was, at least that.

Q. At least that. Now, do you not know also that February, 1936, as against February, 1935, a like advance was

made in the volume of business that you did in the Women's Gowns? A. I believe so. Do I understand you do not want me to look at this (referring to papers)?

Q. I want to get your belief first and then if you have not got that belief— A. Well, I don't want to be——

Q. It is all right, I know you won't, if you say you won't. A. All right.

Q. Now, then, you gave us first and second departments in that order of importance as likely to be affected by the Guild policy? A. (No response.)

Q. Would you say that the next department is the Misses' Better Dresses? A. Either the Misses' Better-

2519 Dresses or Misses' Better Sportswear, but that is a subdivision of the department.

Q. Well, now, let us see; take a look at that little piece of paper that you have in front of you and see whether or not in February, 1935, without looking at anything in 1936— A. I cannot do that; I am sorry.

Q. Put a piece of paper over it. You can take one column and cover 1935. A. And not look at 1936, you say?

Q. Yes.

By Mr. Weisman.

Q. Now, in February, 1935, your Misses' Better Dresses, your volume there was $6,892; is that it? A. You have

2520 given me a very difficult task. You have asked me to look at one column and not the next, but the next column is near the department member, and you will have to ask——

Q. All right, I will withdraw the task. A. If you will rely on my integrity——

Q. I certainly would rely upon your integrity. While I may think you may be mistaken in some of your conclusions I will make no effort to impugn your integrity. A. Thank you.

Q. I mean that frankly, Mr. Seegal. A. Well, now, what is the question, please?

Q. I want to know whether or not your volume for February, 1935, in the Better Misses' Dresses was not $6,892? A. That is correct.

Q. And for the same month in 1936 it jumped up about 20 per cent.; is that correct? A. Substantially.

Q. And showed a volume during February of $8,129? A. Correct.

Q. Now, without looking any further at that paper, your next department most likely to be affected by this Guild program, would you say that might be the Junior Dress Department? A. Well, I think the Women's Medium Priced Dresses might be affected on about as much as the Juniors. 2522

Q. Well, would you place them on a parity? A. Except for Junior High Priced Dresses; you see, it is pretty hard to answer some of these questions.

Q. When I asked you about Juniors, I meant from up to $25 wholesale. A. That is high priced.

Q. Well, now, in that department, since that is high priced, that is very—would you say that that was—the next in line that was likely to be affected by this Guild program? A. Well, that is up to—that has low and high.

Q. Yes. A. And the high priced end would be more affected by the Guild program?

Q. Yes. A. Than would Misses' Better Dresses.

Q. That is right. A. By reason of the strength of the F.O.G.A., but we have that in separate figures there. I don't think you have—— 2523

Q. Well, maybe I am going to surprise you. A. Well, in our business? I think you will.

Q. Well, I have only got what we elicited on cross-examination from other manufacturers of your store——

Mr. Haycraft: Then we want it for the record.

Mr. Weisman: I am going to put it in after a while; you are wasting time. I am going to put the Filene record in.

Mr. Haycraft: Don't be so sure about that.

Mr. Weisman: The record, the figures.

Mr. Haycraft: Maybe.

Mr. Weisman: Well, I am going to offer them.

Mr. Haycraft: Maybe.

Mr. Weisman: And offer them for identification.

Mr. Haycraft: Maybe you think you are.

2525 *By Mr. Weisman.*

Q. In your Junior Dress Department, what was your total volume, this department we have just been talking about, during February, 1935? A. (Witness refers to papers.)

Mr. Weisman: Here is the Filene record in front of us.

Mr. Haycraft: Put it in evidence.

Mr. Weisman: I am going to put it in evidence.

Mr. Haycraft: No, I am checking up with you.

A. The Junior, for 1935, $12,073.

By Mr. Weisman.

2526 Q. For 1935, $12,073. Now, in February, 1936, when this Guild program was in operation, tell me what was the volume for that month that Filenes did? A. In Junior dresses?

Q. Yes. A. $14,877.

Q. That is a pretty big jump, is it not? A. You have asked that question—that jump corresponds, roughly, with the jump in the store.

Q. Well, but it is a pretty big jump. A. You asked the question.

Q. Wait a moment. I withdraw that. You say that jump corresponds with the jump of the store. A. The store had a very good month in February, 1936.

Q. Did your store in February, 1936, advance its sales over February, 1935, approximately 20 per cent.? A. I would have to look up the record.

Q. Well— A. It had a very substantial—whether it was 17, 18, or 20, or 17, I cannot answer, but we did not advance that much.

Q. If you won't answer that, then, why—I will withdraw that. You want to be fair in your testimony, do you not? A. I want to be fair and accurate.

Q. Well, if you want to be both fair and accurate, when 2528
I asked you whether or not that is a pretty good jump, why, if you did not know what the rest of the store advanced, did you answer me and say, "Well, it advanced about the way the rest of the store advanced"? A. Well——

Q. Is that your opinion of being fair and accurate? A. It is my opinion of being fair——

Q. That is all I want to know. That is your opinion of being fair and accurate. A. I have not finished my answer——

Q. You finished it as far as I am concerned. Now, your Misses' Medium Priced Dresses, those start at $10.75 wholesale and go to $12.75 wholesale? A. Yes, sir.

Q. Now, that is a field where the Guild always was very effective; is that not so? A. Well——

Q. I will withdraw that. That is a field wherein the 2529
major portion of your dress business is done? A. The major?

Q. Yes; is that not so? A. The major portion of our dress business is done below those prices.

Q. Below. Well, did you not testify on your direct examination that the bulk of your business at wholesale price was done in the neighborhood of $10.75?

By Mr. Weisman.

Q. Well, in your department, handling $10.75 to $12.75 wholesale, would you say that that department would be the next one to be affected by the Guild program, excluding all those we have already had testimony on? A. Very likely.

Q. Very likely. That means to the best of your knowledge. In other words, bringing to bear all of the experience you have had as an assistant to the vice-president and to the merchandise manager, it is your honest opinion that that is the next one that is likely to be affected? A. As the next major department.

2531 Q. Yes. A. I want to make that clear, that is the major department.

Q. Just take a look at that little piece of paper you have so kindly brought into court and see what is the volume that you did there in February, 1935. A. $9,437. Oh——

Q. Take another look over there. A. I looked at the retail prices; I am sorry.

Q. Wait a moment. Do you mean to say that without that paper you would not, with all your expert knowledge, be able to tell what you are talking about? A. What is that?

(Last question read.)

2532 A. With all my experience and retail knowledge, looking at that set of figures I cannot tell what department is there unless I happen to look at——

Q. Don't you know——

Mr. Haycraft: Wait until he finishes his answer.

The Witness: No one in the world could know—no one in the world could, by looking at that set of figures, tell what the departments are unless they saw the names of the departments on the paper.

By Mr. Weisman.

Q. I thought you might know the volume of your departments. A. There is no one connected with our store, outside of the individual buyer, who would know the exact, to dollar, figure for February last year.

Q. You do not know, anyhow. A. There is no one.

Q. I do not care whether there is no one. A. That is correct.

Q. I want to be sure you do not. A. That is correct.

Q. Taking a little look at the little paper, or a big look at the little paper, tell us what the volume was for February, 1935. A. $6,581.

Q. Now, continuing your examination of the paper, tell 2534
us what it was in February, 1936. A. $7,150.

Q. In other words, an advance in excess of 10 per cent.? A. I judge—somewhere around there, yes.

Q. Yes. Now, you said to me before that that department would run pretty close in position, as to effect upon it of the Guild policy, with the Women's Better Dresses; is that not so? A. Somewhere around there, yes.

Q. In other words—now, Women's Better Dresses, what price do those dresses run at wholesale? A. (Witness refers to paper.)

Q. Now, you do not know without looking at the paper? A. The Women's——

Q. Yes. A. —Gown Shop or Better Dresses?

Q. Did you hear me say Gown Shop? A. No, I wish 2535
you would repeat.

Q. Now, listen. A. Repeat the question.

Q. Now, I will repeat the question; I want to find out from you your best opinion as to what was the wholesale cost of the dresses which are handled in the subdivision of the department which you denominate "Women's Better Dresses"? A. Around $10.75——

Q. To what? A. To $12.75.

Q. Now, that department, will you tell us in February, 1935, what was your volume in that department? A. $7,530, Women's Better Dresses last year, February.

Q. Have you not made a mistake? A. Oh, that was the Gown Shop.

Q. Ah, ha. A. You have used the words "Gown Shop."

Q. No— A. I have used the words "Gown Shop."

Q. I don't care what you have used. You listen to what I am using. A. All right. $8,048.

Q. Now, take a little look and tell me what they did in February, 1936. A. $10,519.

Q. Can you tell what percentage of increase in volume
2537 that was? A. About 30 per cent.

Examiner Bennett: We will take a recess until 2 o'clock for lunch.

Mr. Weisman: May we have until 2.10 so I can put in my long-distance messages?

Examiner Bennett: You have certain messages to send out?

Mr. Weisman: Yes.

Examiner Bennett: We will make the adjournment to 2.10.

Mr. Weisman: Thank you.

(Whereupon, at 12.45 o'clock P. M., a recess was taken until 2.10 o'clock P. M. of the same day.)

2538

AFTERNOON SESSION, 2.10 P. M.

Examiner Bennett: We will be in order, please. You may proceed. Is the witness here?

Mr. Haycraft: Yes, sir; he is.

Examiner Bennett: Will he come around and resume the stand, please.

S. M. SEEGAL resumed the stand and testified further as follows:

Cross-examination (continued). 2540

Mr. Weisman: I would like to have the two or three questions and answers read so I can get the connection.

Examiner Bennett: They may be read if the witness does not remember them.

By Examiner Bennett.

Q. Do you remember them? A. No, sir.

Examiner Bennett: They may be read.

(Last three questions and answers were read as follows: "Q. I don't care what you have used. You listen to what I am using. A. All right. $8,048. Q. Now, take a little look and tell me what they did in February, 1936. A. $10,519. Q. Can you tell what percentage of increase in volume that was? A. About 30 per cent.") 2541

By Mr. Weisman.

Q. Then you have as a further subdivision of these main divisions of the Misses' Sportswear Shop—have you, or

Misses' Sport? A. Misses' Sportswear is the full department such as you have referred to right along.

Q. The price of merchandise therein is $6.75 wholesale, and up? A. Yes, sir.

Q. Before we go to the next question and so that the Court may have some information of what we are talking about in retail figures, will you tell us from your experience and knowledge the average retail price as compared to the wholesale price? A. Generally speaking, $6.75 merchandise would retail for about $10.75. $10.75 merchandise would retail for about $16.75 at retail, generally. $16.75 merchandise at wholesale would retail at around
2543 $25.75 to $29.75, as a general rule. There may be some variations.

Q. Now, this Misses' Sports Department in February, 1935. I believe your volume was $3,701; is that correct? A. What figure?

Q. $3,701. A. What was the figure again? I was just looking at this paper.

Q. $3,701, misses' sports, $6.75 and up. A. That is correct.

Q. For the month of February, 1936, what was the total volume? A. $4,454.

Q. $4,454; is that correct? A. Yes.

Q. Taking all of the figures of your various dress departments, all of which together go to make up these three major departments, or divisions, that you have told us,
2544 that is, women's, misses'-and sportswear, in and for February, 1935, your total volume was $76,809; is that correct? A. I do not know. I would have to figure it up.

Q. Will you add it up, then, so we may have it in the record?

Mr. Weisman: Maybe I can get at it easier this way. I will ask this question:

By Mr. Weisman.

Q. You were present at all times in Boston throughout Mr. or Miss Wright's testimony at the suit instituted by William Filenes Sons against the Fashion Originators Guild of America, Inc., were you not?

Mr. Haycraft: Do not answer that. That is objected to. I move to strike out the question.

Examiner Bennett: I will sustain the objection. I think we had better keep this case within its own limitations and not bring in this other suit.

Mr. Weisman: I want to make this statement for the record.

2546

Mr. Haycraft: I object to it going in the record, Mr. Examiner.

Mr. Weisman: You mean you are going to object to my making a statement? I think that is most unconscionable. Certainly I have a right to make a statement for the record. You would not stop me from doing that, would you?

Mr. Haycraft: I certainly would. This is improper and you know it. It is simply filling up this record with a lot of material which has no place in it. The Examiner has ruled and, in my opinion, that settles the matter. And, furthermore——

Mr. Weisman (interposing): Mr. Examiner, I must protest.

2547

Mr. Haycraft: Now, I will have to say this. Let me finish and do not interrupt me.

Mr. Weisman: Now, you are finishing your statement but you will not let me finish mine.

Mr. Haycraft: I object to this going in the record, Mr. Examiner, and I stand upon my objection.

Mr. Weisman: Have you finished?

Mr. Haycraft: Yes.

Mr. Weisman: Will you sit down so that I know that you are?

Mr. Haycraft: Well, very well, Mr. Examiner, I insist.

Mr. Weisman: Now, let me finish my statement. May I make my statement now, Mr. Examiner?

Examiner Bennett: Proceed.

Mr. Weisman: I think that in order for me to make my statement properly, it will be better to start at the beginning and carry it right through to the end. I shall, therefore, first state to your Honor those things that I desire to obtain and how I desire to obtain them.

2549

I believe it is competent for me to show, among other things:

A. That this witness was present at all times throughout the testimony that was rendered by his superiors, and by those associated with him.

Examiner Bennett: That does not interest me, Mr. Weisman. I will sustain an objection to that going into the record. There is no—I will tell you now so it may save you a lot of time—of course you make any offers you may choose to make, but you were kind enough to permit me to have a paper giving the decision in this particular suit to which you seem to refer; I think that is correct?

Mr. Weisman: It is.

2550

Mr. Haycraft: That has absolutely nothing to do with this matter. I object to it.

Examiner Bennett: It was in the District Court of the United States. It was an action brought by William Filene Sons Company against Fashion Originators Guild of America, Inc. It was between different parties, and it was under a different statute, and it shows that not only no part of same was other than clearly inadmissible, or any part of that

testimony is inadmissible in this particular proceeding, and while you can offer anything you choose that is going to be the ruling of the Examiner.

He has convinced himself that they are entirely different proceedings and that the testimony in that case is not relevant and not competent testimony in this proceeding, or for this proceeding.

Mr. Weisman: May it please your Honor, at the proper time I would like to offer into evidence the pleadings in that suit so that the Court may contrast them, or compare them, with the pleadings in this suit. I believe under such an examination of the pleadings your Honor will see that the issues 2552
in a large majority of cases are identical with the same allegations made here. As to those identical issues, it is my belief that the pleadings are germane and should be before this Court for this Court's aid to the extent that the Court wishes to take it therefrom. I have not yet come to that phase of the case, and I merely say that in passing.

Examiner Bennett: I think it would save you some time if you were acquainted with the Examiner's attitude, and it is for that reason I have given it to you.

Mr. Weisman: As to the purposes of this testimony, let me say that it was merely to refresh this witness' recollection; in other words, since he was present at the examination and heard the testi- 2553
mony, it is a quick way of refreshing his recollection as to what took place at that time, and refresh his recollection of the matters thereby.

Examiner Bennett: This witness has these figures, as I understand it, before him, and has had them before him to-day, and has checked them up. If you desire to ask him about them you may do so. If you have them in your notes you may inquire from that standpoint.

Mr. Weisman: I do not want to take up too much time by discussing this matter, but I do feel that it is quite important.

Examiner Bennett: If you think it will aid to put them in the record that is all right.

Mr. Weisman: I except to your Honor's ruling in not permitting me to ask him about this other matter to which we have discussed the details at some length.

Examiner Bennett: You may have your exception. Proceed.

2555 *By Mr. Weisman.*

Q. Do you remember the question? A. No, I am afraid I do not, now.

Examiner Bennett: Will you have the question read?

(Question read as follows: "Q. Will you add it up, then, so we may have it in the record?")

By Mr. Weisman.

Q. Will you please do so? A. I am sorry. What is the question now?

(Question again read.)

2556 A. Correct.

Q. Now, for the following year; that is, for the same month, namely, February, 1936, your total volume for that month in these departments was $85,463; is that correct? A. Yes.

Q. Correct? A. Yes.

Q. Can you tell us whether or not your total volume for these departments for the month of March, 1936, exceeded the total volume for the month of March, 1935? A. I could not tell you without consulting my records.

Q. Take a look at your records and see whether or not what I have said is not the fact. A. Those departments did more business in 1936 than they did for the year 1935 for the same month.

Mr. Weisman: Did your Honor hear that?

Examiner Bennett: Yes.

Mr. Weisman: I did not know whether your Honor indicated you want it repeated or not.

Examiner Bennett: I am listening to it. Go right ahead.

By Mr. Weisman.

Q. You also had prepared—I will withdraw that question. I believe that you testified that one of the most important departments wherein the effect of the Guild's program was likely to be felt was the Junior Dresses; is that correct? A. Junior Higher Priced Dresses. 2558

Q. Junior Higher Priced Dresses? A. Yes.

Q. Now, I believe that at our request in another lawsuit, which has been before referred to, you prepared figures showing what had been done in that Junior Dresses Department for the first ten days in April, 1935, as contrasted for the first ten days in April, 1936; do you know——

Mr. Haycraft: Objected to and move to strike.

Mr. Weisman: I had not finished the question.

Examiner Bennett: Sustained. 2559

Mr. Weisman: May I ask the basis upon which it is sustained so I may know whether it is as to the form, or what?

Examiner Bennett: I do not know the object of your trying to drag in this other lawsuit. You should cross-examine on what he said this morning. You cannot contradict him by that sort of thing unless he testified himself at that time.

Mr. Weisman: He did not, but his immediate superior did.

By Mr. Weisman.

Q. I will ask you this question: Have you before you a compilation of figures showing business that had been done by Filenes in its Junior Misses' Department in the first ten days of April, 1936?

Mr. Haycraft: I object to that as not proper cross-examination.

Examiner Bennett: I think it is proper. Go ahead.

2561

A. I have the record for the total Junior Misses' Department.

By Mr. Weisman.

Q. Will you look at that total—I withdraw that. Have you also the figures for the first ten days in April, 1935? A. Yes, sir.

Q. Will you contrast those figures for the period April 1935, with the period April, 1936, and ascertain whether or not in that period in 1936 there was an increase of $4,055, or approximately 88 per cent. increase? A. There was that large increase in total in the Junior Department yes.

2562

Q. That large increase is approximately an increase of 88 per cent. over the year 1935; is it not? A. Yes. I said so.

Q. You also testified that the Women's Gowns Department was an important—I withdraw that—was greater—I withdraw that—was greatly affected by the Guild program: did you not, on your direct testimony? A. Yes.

Q. For the same period as you testified with regard to the previous question, I want you to look at your records and see whether in April—in that period of April, 1936, in that department there was not an increase in volume of business of approximately 33 per cent.? A. That is correct.

Q. I understood you to further testify that the other department in which this Guild policy was most effective, or which most—which was most affected by policy, was the Misses' Better Dresses; that is the fact, is it? A. I believe I testified it would be more apt to be affected—it would be more apt to affect that department than the less expensive.

Q. That is true? A. Yes. 2564

Q. You not only testified to it— A. Anything I testify to is true.

Q. You believe it to be true? A. To the best of my knowledge and belief it is true.

Q. As to the Misses' Better Dresses, I want you to examine your records once more and see whether or not in that department during that same period—namely, April, 1936, as contrasted with April, 1935—there was not an increase of approximately 18 per cent.? A. That is correct.

Q. Correct? A. Yes.

Q. Have you the figures with you for May, 1936, as contrasted with—and for May, 1935? A. No, sir.

Q. Can you get them for us? A. Yes, sir.

Q. Will you get them for us? 2565

Mr. Haycraft: I object to that as incompetent, immaterial and irrelevant, and not proper cross-examination.

Examiner Bennett: I will have to advise the witness, as I have the other witnesses, that he is not under an obligation to do so so far as being in here is concerned, but it is perfectly proper if he wishes to do so for the accommodation of this attorney, for him to do so.

Mr. Weisman: May I also advise the witness, if he does not know it, because I think it is well for him to know this, if he does not do it, because I think it is a nice thing to do, and because he agrees with that, I shall apply to the Federal Trade Commission for a subpoena duces tecum and attempt to have all of those records brought in here.

Examiner Bennett: I do not believe you can get it for that purpose.

Mr. Weisman: I think it is a proper part of our case.

Examiner Bennett: I think you would make
2567 quite a ludicrous application, certainly you would put yourself in a rather ludicrous situation if you were to make an application of that character in a situation of this kind.

Mr. Weisman: I think that is very germane to our case. It is either a question of now or later.

Examiner Bennett: If you want to bring him in later on as a part of your own case you may do so.

Mr. Weisman: That is what I meant, that I would subpoena him on my own case. I meant if he will not do it now I will get him later. If he will not accede to my request now, why, when I come back to Boston when we put in our case we will have a subpoena duces tecum issued for the production of
2568 these records.

The Witness: Am I supposed to answer any of these questions?

Mr. Weisman: No. I am simply discussing this with his Honor.

Examiner Bennett: I will just merely advise you what you may do in the matter and you can accede to his wish if you want to.

Now, we will have a short discussion off the record and you may make any bargain with him that you wish if you desire to do so.

(There was a discussion off the record.)

Mr. Weisman: I should like to have this on the record.

The Witness: I shall be guided by the advice of Mr. Haycraft since Mr. Weisman is the representative of people who have seen fit to blacklist us.

Mr. Haycraft: I object to that going in the record.

Mr. Weisman: I insist on it being in the record.

Examiner Bennett: Proceed, gentlemen.

The Witness: Do I have to answer the question?

Examiner Bennett: You need not answer that question. 2570

Mr. Weisman: May I have an exception?

Examiner Bennett: Yes.

Mr. Weisman: I should like to know what the last question was now.

(Question read as follows: "Q. Would you get them for us?")

Examiner Bennett: That is the one the witness need not answer.

By Mr. Weisman.

Q. Have such records been prepared? A. For the month of May?

Q. Yes. A. I have never thought of the month of May in this particular connection. In order to make clear to 2571 you and Mr. Weisman, these figures were made up to April 11 in response to the Federal Trade Commission's questionnaire. We have to answer so we—we were asked to answer certain questions, and we did not want to answer those questions without being sure of the facts. So, we obtained those facts and that is why we did not do it for April 15 or April 14, but a day or two after we received the questionnaire we prepared it for the period in question and sent it to the Federal Trade Commission.

We have not had any occasion since that time to go int
that aspect of the situation. I am not refusing to furnish th
information that you request because it may be good an
may be bad because I do not have any idea what it is.

By Mr. Weisman.

Q. Notwithstanding the fact that you have heretofo
testified that you were the assistant to the merchandis
manager, and that you are the assistant to the vice-pres
dent, and that you know all about the business and that a
merchandise orders must be approved by you, or unde
you, or confirmed by or under you, and notwithstandin
2573 the balance of your testimony, you now tell us that yo
have no idea whether or not your volume of business i
these dress departments was greater or less in May, 193
than it was in May, 1935? A. I made no such stat
ment.

Q. Did you not just a moment ago say that you ha
no idea what these figures were? A. I have never sai
whether they would be favorable or unfavorable. I ca
tell you off the record—no, I can tell you without figurin
it up right here that most of these departments—this i
just from memory—that all in May and April—all of thes
shops in May and April are still bad, and are still ba
to-day. In other words, for the French Shop; for exampl
which is the most affected department in the store, it wa
2574 bad in May and it was bad in June and it was bad all o
this month.

Now, if you ask me whether the misses' sportswear, o
other departments were or were not, I cannot remembe
the detailed figures. It is physically impossible for me, an
it is physically impossible for anyone else as far as that i
concerned, as it is for me, to carry those figures in m
mind. That is the reason that I am unable to answer yo
as to those detailed figures.

Q. I have not asked you about any detailed figures. I asked you to take the volume as a whole in all dress departments for May, 1936, as contrasted with May, 1935, and tell me was your volume lesser or greater? A. The volume in those departments for May?

Q. What were you looking at? A. I thought I might have the main store, I might have it on this card. You see, I usually carry in my pockets this card which shows how the main is doing in various aspects of its operations. I think I can for the month of May—may I just look at my documents here for a moment——

Q. (Interposing) What I am trying to do is just test your general knowledge of this business. A. In your 2576
statement to me a moment ago, your question, rather—you said that I was supposed to know everything in the business. I have never said that I knew everything in the business and I never would say it.

Q. I have never attributed omnipotence to you, and if you were to claim it I would never concede it. A. I would not claim it.

Q. I want to know this question from you; it is a very simple question; if you cannot answer it I want to know, and if you can I want to know that too. My question is——

Mr. Haycraft: I want to object to the question; the period of time is subsequent to the period of time covered by the complaint. 2577

By Mr. Weisman.

Q. I will reframe my question; I want to know whether or not you know if the total volume of your dress business in all departments was greater or lesser in May, 1936, as against May, 1935? A. My recollection is that the total volume of those departments that we have been discussing in May, 1936, was slightly greater than in May, 1935.

By Mr. Weisman.

Q. Now, what about June, 1935, as contrasted June, 1936? I want all departments. A. You are tal about the men's?

Q. No. A. The same group?

Q. The same group, all of those departments. A. (Referring to paper) Those departments, I believe, sh a small increase in June, 1936, over June, 1935.

Q. Now— A. I want it clear I am not testifying my records.

Q. I understand that. We will get the records. as to July, which is nearly pretty near elapsed, you
2579 received in your business daily sheets showing the trast of this year with last year. Now, can you giv your opinion as to how the first twenty-five days of 1936, contrasted with the first twenty-five days of 1935, with regard to those same departments? A. T same departments showed either a slight increase slight decrease.

Q. But, in any event, the best of your recollecti that there is not very much difference? A. Either that is correct.

Q. Do you personally do any buying? A. No, sir.

Q. Do you personally go into the market, New City market, to purchase any dresses for your conc A Well, I personally don't do any buying; I perso
2580 don't go into New York City to do any purchasing.

Q. Do you go in with your buyers? A. I have in past.

Q. When was the last time you went into New York a manufacturer's showroom? A. The last time I we New York in a manufacturer's showroom was prob about two years ago when I actually went with a b into a showroom.

Q. Now, as a matter of fact, your position is mo less an office position, is it not? A. You will hav define that.

Q. Well, I mean, your duties are rendered in the office of Filenes in Boston? A. Most of my time is spent in Boston.

Q. Well, you say "most of your time." Where is the balance of your time spent? A. Why, I go around to these various shops, the Continental Clothing Company—I make trips to R. H. White Company, I spend some time in our New York City where the manufacturers bring their lines in, sometimes look at those lines; spend some time in the Associated Merchandising Corporation offices in New York and go to some of the meetings of the Associated Stores, of which we are a member. I think, in general, that is how I spend my time when I am working. 2582

Q. Now, that is, you said you spent some time in the office of the Associated Merchandising Corporation? A. Yes, sir.

Q. Now, what is the Associated Merchandising Corporation? Is that part of Filenes? A. The Associated Merchandising Corporation is an organization to which Filenes belongs. It has a dual purpose. One purpose of—one of its purposes is to obtain figures on operation of the business that might be helpful to the individual stores, and the other—that is commonly called the Retail Research Association, or R.R.A., and the other aspect of which is connected with buying of merchandise. We buy substantial amounts of merchandise together, such as hosiery and various lines like that.

Q. Do you usually pool your purchases with other members of A.M.C.? A. I say, like group buying, like in hosiery, we will get together and buy substantial amounts of merchandise for all of the stores. 2583

Q. When you say "all the stores," what do you mean? A. Of the Association.

Q. Are these other stores owned by Filenes? A. Oh, no, no, no. When I say "we all get together," we, the stores which belong to the Associated Merchandising Corporation.

Q. Well, how many stores belong to that? A. The Associated Merchandising Corporation has about nineteen stores.

Q. Where are they located? A. Various cities in the country.

Q. Throughout the country? A. From——

Q. You mean that the Associated Merchandising Corporation buys for all of those stores? A. No, the individual buyers—the mechanics of a group buying—which I assume is what you have reference to?

Q. Yes, I want that. A. That consists of having a meeting in New York at the Associated Merchandising Corpo-
2585 ration's offices, where, for example, all the hosiery buyers of these stores will assemble, look at the various lines of merchandise, compare various prices, and so forth, and then decide that such and such a line, or such and such a resource represents the—the firm that we want to do business with, and we pool our purchasing so as to have the advantages of large sale buying.

Q. You mean you get it cheaper that way? A. We effect economies for the manufacturer which, in turn, permit him to sell us merchandise——

Q. Sell you cheaper? A. —at a lower price.

Q. Have you ever done that with regard to dresses? A. Yes, but on a very small scale, because our experience generally is that the more stable lines of merchandise, such as sheets and linens and pillow cases and so forth, lend them-
2586 selves better to group buying, because there is not the problem of one style being suitable in Los Angeles that is not suitable in Pittsburgh, and so forth, as in the dress situation, the result being that it works out far more effectively in the more staple lines.

Q. You mean, with better results— A. With fewer——

Q. —when you say more effectively? A. With better results, yes.

Q. But, notwithstanding that, don't you know that in some instances the A.M.C. acting for and on behalf of your store, or others, will engage in group buying of dresses, in group fixing of discounts, and — A. Getting back to your first question——

Q. Yes. A. —group buying of dresses, I did not say we did not. I said that we do more of the more staple lines than we do—but we do buy some dresses in a group way.

Q. In that fashion. A. I did not mean to say we did not.

Q. That is what I wanted to make plain. I evidently misunderstood you. Your answer was that you do not buy your dresses through group buying to such a degree as you buy socks and hosiery? A. That is correct. 2588

Q. And such things. A. That is the statement I want to make.

Q. O.K. Now, I understood you on direct examination to say that in 1933 your store indicated to the Guild that it was its policy to aid in the elimination of style piracy in the dress business? A. I said, 1933; it might have been 1932, fall or spring; it was around that period.

Q. I do not want to trap you. A. No, I do not suspect you.

Q. It was in the letter 1933. A. I just want to be sure that any answer I give is correct.

Q. Have you got the letter here? A. If you say 1933, it is doubtful——

Q. I might make a mistake. A. My mistake won't be deliberate, an' I don't think yours will be. 2589

Q. It was in June, 1933. Now, you stated that you were sympathetic—I think were the words that you need— A. If you say those are the words, those are the words.

Q. Well, did those words fairly express your attitude? A. Correct.

Q. Well, you were a little more than sympathetic, were you not? A. I should say we were enthusiastically in favor of the original program of the F.O.G.A. as we understood it.

Q. I understood you to say that William Filenes Sons were enthusiastically in favor of the Guild program as they understood it to be for the elimination of style piracy; is that correct? A. As they understood it at that time.

Q. That is right. A. That is correct.

Examiner Bennett: Well, are you still enthusiastic about it, as you understand it now?

The Witness: No.

By Mr. Weisman.

Q. All right. If the program were the same now as it was then, would you say Filenes is still enthusiastic?

2591

Mr. Haycraft: I object.

Mr. Weisman: It is up to this Court to determine whether our program has changed.

Examiner Bennett: I will let him answer that. If you can answer it, if you think you can.

The Witness: I can answer it, but I would like the question repeated, I would like to have it read so I may be sure I get it right.

(Question read.)

By Mr. Weisman.

Q. In support of the program? A. If the program is still the same as it was then?

2592 Q. That is right. A. I would be in favor of the program if our attorneys would advise us that the program is legal, which they do not seem to think it is.

Q. Well, aside from the legality, and confining ourselves to the business policies, leaving the legal questions out of it, will you now answer my question?

Examiner Bennett: I think we will have to stop that, because I think that is really the issue before the Tribunal. I do not believe we will entertain opinions on it.

y Mr. Weisman.

Q. In 1933, Filenes Sons manifested their enthusiastic pport, as you have termed it, of the Guild program, did ey not, by writing a letter to the Guild stating that they ere in favor of that program?

Mr. Haycraft: I object to the question as irrelevant and immaterial, Mr. Examiner.

y Mr. Weisman.

Q. Is that not so?

Mr. Haycraft: I cannot see where it is going to be of any probative value whatever to the present proceedings, and particularly in line with the stipulation which has been made. 2594

Examiner Bennett: I think that is in the record already.

Mr. Weisman: How?

Examiner Bennett: I think that is already in the record.

Mr. Weisman: He brought it out on direct. Now, I am going to show what happened, if your Honor will remember——

Examiner Bennett: Go ahead.

Mr. Weisman: —first——

Examiner Bennett: If it is a foundation I will hear it. 2595

Mr. Weisman: Yes.

Mr. Weisman.

Q. In 1933 Filenes Sons manifested their enthusiastic pport, as you have termed it, of the Guild program, did y not, by writing a letter to the Guild stating that they re in favor of that program, and I show you this letter l ask you whether or not that letter was written by

Filenes to the Fashion Originators Guild as a visible evidence of their enthusiastic support of the Guild policy of elimination of style piracy?

Mr. Haycraft: I have an added objection to that already made, Mr. Examiner; there is nothing to show that this witness wrote the letter; no foundation laid.

Mr. Weisman: I do not have to show it. He might know the letter. Do you want me to qualify him, to see if he knows Mr. Wright's signature, and so forth?

Mr. Haycraft: No, but you are putting in the
2597 question knowledge on the part of this witness.

Mr. Weisman: He knows all about this business. He is the great expert that you brought here. He is the fellow that is the assistant to the vice president and to the merchandising manager, and through whose hands all these things pass, and who knows what goes on in the business, and all that.

Examiner Bennett: Let me save the record for you gentlemen: Do you know whether that is the letter?

The Witness: Go ahead.

Mr. Weisman: I now offer that letter in evidence.

Examiner Bennett: Go ahead and ask him. It is not going in evidence if there is any objection.

2598 Mr. Haycraft: There is an objection, Mr. Examiner.

Mr. Weisman: Wait a moment. May I mark that for identification?

Mr. Haycraft: It does not contradict the testimony of the witness.

Mr. Weisman: I submit that it does.

Examiner Bennett: It may be marked for identification Respondents' Exhibit 8.

(Letter from Arthur W. Wright, Merchandise Manager, Wm. Filenes Sons Company, Boston, under date of June 29, 1933, to Fashion Originators Guild of America, 512 Seventh Avenue, New York, N. Y., was marked for identification Respondents' Exhibit 8.)

By Mr. Weisman.

Q. I show you a letter of July 1, being a copy of a letter from the Fashion Originators Guild of America, to Arthur W. Wright, Wm. Filenes Sons Company, together with a copy of what purports to be a letter from Wm. Filenes Sons of July 5 to the Fashion Originators Guild of America, 2600
together with a letter to Wm. Filenes Sons from Fashion Originators Guild of America, together with letter of August 9, from Wm. Filenes Sons to Fashion Originators Guild, and ask you whether or not those letters are all part of the same——

Examiner Bennett: I object to bringing all that correspondence in here and having it go into the record.

Mr. Weisman: May I call your Honor's attention to this: I believe your Honor would see from a reading of this correspondence that the policy of the Guild was the same in 1933 as it is now. I want to show that.

Examiner Bennett: That is an affirmative de- 2601
fense. I will sustain the motion against going into that.

Mr. Weisman: May I mark them for identification?

Examiner Bennett: You can mark them for identification.

Mr. Weisman: So we can save the record.

Examiner Bennett: There will be no trouble about that.

Mr. Weisman: All right, thank you.

Examiner Bennett: They will not be identified at this time. Go ahead and mark them if you want to have them marked.

Mr. Weisman: Part of the same transaction referred to in Respondents' Exhibit 8 for Identification.

Examiner Bennett: Yes. Well, all right, mark them—no, no, they are not to be identified at this time. You can mark them so you will know what you are offering.

2603 (Copy of letter from executive secretary, Fashion Originators Guild of America, Inc., under date of July 1, 1933, to Mr. Arthur W. Wright, Wm. Filenes Sons Company, Washington, Summer, Hawley, Franklin Streets, Boston, Mass., was marked for identification Respondents' Exhibit 9.)

(Letter from Arthur W. Wright, Merchandise Manager, Wm. Filenes Sons Company, Boston Under date of July 5, 1933, to Fashion Originators Guild of America, Inc., 512 Seventh Avenue, New York, N. Y., was marked for identification Respondents' Exhibit 10.)

2604 (Copy of letter from executive secretary, Fashion Originators Guild of America, Inc., under date of July 7, 1933, to Mr. Arthur W. Wright, Wm. Filenes Sons Company, Boston, Mass., was marked for identification Respondents' Exhibit 11.)

(Letter from Arthur W. Wright, merchandise manager, Wm. Filenes Sons Company, Boston, Mass., under date of August 9, 1933, to Mr. J. M. Golby, Fashion Originators Guild of America, Inc., 512 Seventh Avenue, New York, N. Y., was marked for identification Respondents' Exhibit 12-A.)

(Memorandum from A. W. Wright, under date of August 8, 1933, to "All Dress Buyers," was marked for identification Respondents' Exhibit 12-B.)

(Letter from Arthur W. Wright, merchandise manager, Wm. Filenes Sons Company, Boston, under date of August 8, 1933, to Mr. J. M. Golby, Fashion Originators Guild of America, Inc., 512 Seventh Avenue, New York, N. Y., was marked for identification Respondents' Exhibit 12-C.)

(Circular letter from executive secretary, Fashion Originators Guild of America, Inc., 512 Seventh Avenue, New York City, under date of August 3, 1933, was marked for identification Respondents' Exhibits 12-D and 12-E.) 2606

Mr. Weisman: May I have an exception to your Honor's refusing to allow this witness to identify these?

Examiner Bennett: Certainly you may. I do not want to take up the time with that sort of thing—to your putting in your case in chief at this time.

Mr. Weisman: I now wish to make this offer of proof, to wit, if I had been permitted to exhibit these documents to this witness he would have identified the same as being part of the transaction, would have laid the proper foundation, that the letters written purporting to be written by Wm. Filenes Sons Company to the Guild were, in fact, written 2607 by Wm. Filenes Sons Company to the Guild, and the copies of letters purported to be written by the Fashion Originators Guild of America, Inc., to Filenes Sons Company were, in fact, written by the Guild to Filenes Sons Company and received by them, and that the examination of these documents would have disclosed that the Guild program as it was in 1933, so was it in April, 1936.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Now, in 1933——

Examiner Bennett: Just a moment. I think the Examiner will make a comment upon that offer of proof.

Mr. Weisman: What do you say?

Examiner Bennett: I think the Examiner will make a comment for the record on that offer of proof. The Examiner merely wishes to say that at the proper time the Respondent can call its witness, properly, and with its own witness it can identify
2609 these papers and present them in the regular course of its case in chief, where the papers belong.

By Mr. Weisman.

Q. This morning on your direct testimony, I understood you to testify in 1933 Wm. Filenes Sons Company sent a letter to the Fashion Originators Guild of America to evidence their cooperation in the Guild's policy of attempting to curb or limit the copying of original styles; is that correct; did you so testify? A. Yes.

Q. I show you this letter and ask you whether this is the letter that you had reference to?

Examiner Bennett: Well, that—you have already done that.

2610 Mr. Weisman: Well, Mr. Haycraft said he didn't know that was the letter.

Mr. Haycraft: Why do you not read the question propounded in the first instance, and I did not understand it that way. If I had known this was the letter that the witness referred to in his direct examination I would not have objected to it being admitted.

Examiner Bennett: You would not have objected?

Mr. Haycraft: No.

Examiner Bennett: Well, of course, that would change the situation.

Mr. Weisman: I think your Honor is right about that. That would change it.

Examiner Bennett: I supposed you knew what you were objecting to.

Mr. Feldman: He is just objecting on general principles.

Mr. Haycraft: I have no objection to that, Repondents' Exhibit 8.

Examiner Bennett: All right.

Mr. Weisman: Respondents' Exhibit 8 is now in 2612
in evidence.

(Letter referred to, heretofore marked for identification Respondents' Exhibit 8, was marked as an exhibit and received in evidence.)

Mr. Weisman: Where are the other exhibits?

Examiner Bennett: Show the Attorney the other letters and see if he has an objection to them.

Mr. Weisman: Well, I do urge now——

Examiner Bennett: Well, you can show them to him before you hand them to the witness.

Mr. Weisman: All right. In other words, maybe we will save some time; he won't object (handing papers to Mr. Haycraft).

Examiner Bennett: All right; they may be re- 2613
ceived, then.

Mr. Weisman: Received in evidence Respondents' Exhibits 9 to 12.

(Letters referred to, heretofore marked for identification Respondents' Exhibits 9, 10, 11, 12-A, 12-B, 12-C, 12-D and 12-E, were marked as exhibits and received in evidence.)

2614

Mr. Haycraft: The witness identifies them as being part of the correspondence, that is the better form, and so—and I don't see what it is.

Examiner Bennett: All right. I will cancel the ruling of the Examiner previously made.

Mr. Weisman: Yes.

By Mr. Weisman.

Q. In connection with Respondents' Exhibit 8 in evidence, I now show you a batch of letters, I don't want to recite them again.

2615

Mr. Haycraft: Give the numbers.

By Mr. Weisman.

Q. Marked Respondents' Exhibits 9 to 12-E, for identification, and ask you whether or not they are all part of the same transaction, and were duly and regularly sent and/or received, as the case may be (indicating)? A What is the question?

(Last question read.)

Q. And part of the same transaction referred to in Respondents' Exhibit 8 in evidence; in other words, whether or not that was the continuity there? A. They were.

2616

Mr. Weisman: I now offer them in evidence, your Honor (referring to Respondents' Exhibits 9 to 12-E).

Examiner Bennett: All right, received, because of counsel for the Commission withdrawing the objection.

By Mr. Weisman.

Q. Now, referring to Respondents' Exhibit 8 in evidence, would you say that honestly expressed the policy of Filene's

at the time it was made and down to date? A. Exhibit 8 is the original letter. I take it?

Q. Yes, and in my question I have particular attention to this paragraph; "We do not and will not knowingly sell in our women's, misses', and junior departments any copies or pirated dresses of original garments created by any members of your Association." A. I don't think that that line properly expresses unless you read the rest of it.

Q. With all of it, it then goes on and says: "We reserve the right, however, to make exceptions in some cases where certain styles have been so widely copied that in our judgment we need to purchase such styles to meet competition or to satisfy customer demand, while we hope cases of this 2618 kind may not occur, if they do we are to decide our conduct and also decide whether garments have been copied. Furthermore, we propose to annex to all of our orders for women's, misses', and juniors' ready-to-wear merchandise, the following clause: 'This order is placed upon the seller's warranty that the above garments are original styles, created by the seller, unless identified by this order as a replica of foreign style creations. The purchaser reserves the right to return any merchandise which is not as warranted.' Yours very truly." Now, with all of that in mind, I ask you whether or not, with the exceptions herein noted, it was the intention of your store at that time not to knowingly sell copies of pirated dresses—copies or pirated dresses? A. It was.

Q. And that was the policy that you were enthusiastically in favor of? A. Yes, sir. 2619

Q. Now, you said to me in answer to my previous question, at one part, that you agreed to this policy with reservations? A. Yes, sir.

Q. And those reservations were the reservations which you state are embodied in Respondents' Exhibit 8? A. Yes, sir.

2620 Q. In answer to that, or in reply to those reservations, you, Filenes received this letter of July 1 from the Guild, Respondents' Exhibit 9? A. Yes, sir.

Q. Did not Filenes then change the statement of its reservations? A. No, sir.

Q. Well, I call your attention to Respondents' Exhibit 10, in which the following is stated, and ask you whether or not this fairly stated Filenes position, or did they have some reservations beyond this—this letter states: "It is evident from your letter that you misinterpreted our reason for incorporating the qualifications in our letter of June 29"—that is Respondents' Exhibit 8—"Our purpose
2621 in qualifying your original 'contract letter' was that we objected to signing a contract we felt it would be impossible to fully carry out." "We are most heartily in sympathy with the purpose behind your endeavor to eliminate copying done on dresses and have emphasized our policy very strongly to our organization. We are most hopeful that your work will eliminate this evil to a marked degree, though we doubt it can eradicate copying 100 per cent, and it was with the idea of taking care of the few cases which may occur that we inserted the qualifying paragraph. We do not object to using your stamp, for as a matter of fact our suggested stamp was stricter than yours in that it called for all dresses being originals, except in cases of copies of foreign models." Now, with that in view, will you answer my question? A. As I recall your ques-
2622 tion, I believe the first part of that letter, I mean the second line says that you misinterpreted the purpose of incorporating that qualification.

Q. Yes. A. There is nothing in that letter that says that we withdraw that qualification. We say that "you misinterpreted the purpose of our incorporating that qualification." There is nothing in that letter, as I read it, or any correspondence that I have seen, and I believe I have seen

all the correspondence, that at any time says we withdraw that qualification; we never did.

Q. No, I didn't say you ever did. I say, I ask you whether or not in your opinion you do not believe that Respondents' Exhibit 10, being the letter of July 5 which I have just read to you, did that not limit the qualification contained in your letter of June 29? A. The qualification stated in—the fundamental is that we did have that reservation, we insisted on that reservation, we were sorry that the Guild misinterpreted the spirit back of it, whatever you want to call it, but the qualification stayed in—it was the intention of having it stay in, and it never came out.

Q. But its only purpose in staying in was because you 2624
did not think it could work, is that not so? A. The only purpose in keeping that qualification was that from the very beginning we wanted to be sure that nothing would endanger our competitive position.

Q. Well, look, let me read you this, what I stated as your purpose: "Our purpose in qualifying your original contract really was that we objected to signing a contract we felt it would be impossible to fully carry out. We are most heartily in sympathy with the purpose behind your endeavor to eliminate copying down of dresses, and have emphasized our policy very strongly to our organization." A. Yes.

Q. In other words, in view of that would you not say that this limited your original qualification? A. Not in 2625
the least bit.

Q. Not in the least bit. That is what I want to know.

Examiner Bennett: We will take a recess of ten minutes.

Mr. Weisman: Thank you. You may leave the stand.

(There was a short recess taken.)

Examiner Bennett: We will be in order, please. You may resume.

By Mr. Weisman.

Q. Before recess you were sitting a little closer to his Honor. I believe it would be better if you would sit back over there so that he can hear you.

Mr. Haycraft: I object to that. The witness has a right to sit where he usually sits.

Mr. Weisman: I simply wanted him to sit where he did before. If you sit over there you can put your papers on that desk and that will be all right.

The Witness: I believe I would prefer to put them over here.

2627 *By Mr. Weisman.*

Q. Very well. As an executive of Wm. Filenes Sons Company, you are familiar with their policy, were you not? A. Yes, sir.

Q. After Respondents' Exhibit 10 was received by the Fashion Originators Guild—Wm. Filenes Sons Company received a reply thereto, Respondents' Exhibit 11; is that so? A. Yes, sir.

Q. And this letter of July 7 sets forth after having thanked you for the letter of July 5, and says: "Your explanation certainly clarifies the position you have taken and I wish to commend you on it." Did you not understand by that language that the Fashion Originators Guild believed that your letter of July 5 limited the reservation 2628 contained in your letter of June 29?

Mr. Haycraft: I object to that as incompetent, immaterial and irrelevant whether they believed it or not.

Mr. Weisman: I think it is very material what they believed. Here are the documents which indicate that very definitely and form an interesting contrast to the witness' testimony.

Mr. Haycraft: The documents speak for themselves, and they are in evidence. I object to any further cross-examination upon them.

By Mr. Weisman.

Q. Did you, when you were enthusiastically in favor of the policy of the Guild think it was the intention of the Guild to ultimately so minimize copying that legitimate manufacturers would then be able to get along?

Mr. Haycraft: Same objection.

Mr. Weisman: I think that is a perfectly proper question to show what the policy of the Guild was.

2630

Examiner Bennett: Same ruling. The objection is sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Did you, at the time that you were so enthusiastically in favor of the policy of the Guild, believe that this unfair copying of original styles was a means of unfair competition between retailers?

Mr. Haycraft: Same objection.

Mr. Weisman: Would you be kind enough to let me complete my question?

Mr. Haycraft: I thought you had completed it.

Mr. Weisman: No.

2631

Examiner Bennett: Complete your question.

By Mr. Weisman.

Q. —was that one of the reasons why you were enthusiastically in support of its elimination?

Mr. Haycraft: I object on the grounds stated, and I wish to add the further objection that counsel

for the respondent has not correctly quoted this witness in his question to the witness because the witness was very careful in his answer to say that he was enthusiastically in support of this policy, with reservations, but that is something which has never been included in the questions as they are being propounded by counsel for the Respondent. I think it is unfair for your questions to be framed in that way without referring to this reservation which was specifically and definitely set up by the witness.

Examiner Bennett: I sustain the objection. It is an interpretation of the law, a conclusion of the

2633 witness, and it is objectionable from other standpoints also.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. I show you Respondents' Exhibit No. 11, which is a copy of a letter sent out by Fashion Originators Guild to Filenes, on July 7, 1933, and ask you whether or not your firm was in accord with the expressions therein contained?

Mr. Haycraft: Same objection. The letter speaks for itself.

Mr. Weisman: This was the letter from us to them. I want to know whether they were in accord with those things.

2634 Mr. Haycraft: That is indicated by a reply to the letter.

Examiner Bennett: If that is so I sustain the objection.

Mr. Weisman: Why do you say that? Have you no sense of obligation to the Court? There is no reply to this letter. That is why I am asking the question.

Mr. Haycraft: What is the date of the letter?

Mr. Weisman: You can tell the Court that when you do not even know the date of the letter? How do you hope to get along on that basis? The date of the letter is July 7. Where is there a reply to this letter?

Mr. Haycraft (after examining several documents): There does not seem to be a reply to this letter. I do not object to it on the ground that there is a reply to the letter. However, I do object to it on the ground that this witness is not in a position to testify as to whether or not the firm of Wm. Filenes Sons Company was in accord with the policy 2636 of the Guild as stated in that letter.

Mr. Weisman: This is a rather unusual situation here, Mr. Examiner. After counsel for the Commission has presented this witness here as the grand factotum of the firm of Wm. Filenes Sons Company now he says that he does not know anything about it. First he was a lion and now he is a lamb.

Mr. Haycraft: I did not bring him here as the grand factotum of anything. I did not bring him here with a knowledge of what the firm of Filene had as to their accordance with the policy of the Guild as stated in that letter.

By Examiner Bennett.

2637

Q. Have you read that letter? A. I am about two thirds through. Now, I have finished it. What is the question?

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: I will overrule the objection and allow the witness to answer.

A. As the grand factotum I suppose this description is——

By Mr. Weisman.

Q. I withdraw that "grand factotum." That was for Mr. Haycraft and not for you. Can you tell us just as a witness here the proper answer to the question? A. Well, as a lesser light, we were in favor of the principles enunciated by the Guild but questioned the practicability of carrying out their programs as they originally stated it, which was the reason for our original reservation. And we never at any time considered that that reservation had been withdrawn.

Q. That is not what I asked you? A. No?

Q. No. I asked you whether or not, after reading this
2639 letter, you would say that at the time that you received it you were generally in accord with the expressions therein contained.

Mr. Haycraft: The witness has already answered the question. I think this is an improper question to ask him now.

Mr. Weisman: He knows. He can get along all right. He can quite readily take care of himself. Why not leave him alone.

Mr. Haycraft: I object on the ground that the question has been answered, and the witness has made an answer to the question which is a correct answer to the question, and therefore I object to
2640 any further interrogation as cumulative, repetitious and highly improper. It is simply wasting time here. We will never get through if we pursue this type of tactics all the way through.

By Examiner Bennett.

Q. Can you make any further answer to that question? A. I believe I have answered the question. I hope I have answered it. I have intended to.

By Mr. Weisman.

Q. Well, do you think that you have answered me, when I stated to you when I showed you this letter and asked you as a proper representative of Filenes whether at that time generally Filenes were in accord with the statements therein made? A. I believe I answered that.

Q. Were they or were they not, "yes" or "no"? A. Filenes was not in accord with the principles enunciated in this letter except and only as far as practicable.

Q. What was that? A. Filenes were in accord with the principles enunciated in this letter as far as practicable.

Q. Now, that is all I want. A. As far as practicable.

Q. Yes. With regard to the matter of how far they were 2642
practicable, I show you Respondents' Exhibit 12-D. A. Yes.

Q. I call your attention to the fourth paragraph therein which sets out the mechanics or practical way in which the matter was to be handled; does it not do so? A. We did not think this letter, which we thought at that time, and I still think, was more or less of a form letter in any way, shape, or manner changed that what we considered to be an important reservation.

Q. I did not ask you that. A. What is the question?

Q. Did you not understand the question? A. I thought I did.

Q. That is not an answer to the question. I did not ask you about that. A. Well, what is the question? 2643

Mr. Weisman: I will ask that the question be read.

Mr. Haycraft: He has already answered the question.

Examiner Bennett: Let the question be read.

(Question read.)

By Mr. Weisman.

Q. What about it? A. The fourth paragraph does set out the mechanics, yes.

Q. It shows a practical way under which it was to be handled; does it not? A. It shows the practical way in which the Guild advised it was to be handled.

Q. Was your firm greatly in favor of so handling it? A. We were in favor of handling it as far as it would permit us to say in a competitive position.

Q. Did you ever tell that to the Guild? A. Why, yes.

Q. Did you or did you not answer that letter, or in answer to that letter did you ever tell it to the Guild? A.
2645 I do not know whether we ever answered this letter, and if we did I do not even know today whether or not we kept reiterating every time we received a letter from the Guild that we had a reservation.

Q. Listen to this: "With reference to your letter of August 3, I am writing you because I thought you would be interested to know we consider your statement of policy so good, especially the paragraph at the bottom of the first page, and continuing on the second page, we have sent a copy of your letter to all of our dress buyers, together with a memorandum stating we shall expect their cooperation in carrying it out." A. I now recall that letter.

Q. Notwithstanding that, you still say that you kept your reservation? A. Yes, sir.

2646 Q. And you say in no place in such letter—I will put it this way: Can you show me any place in that letter where you mention your reservation? A. Having made our reservation originally, and never having withdrawn it, to my knowledge, I feel that the reservation still existed.

Q. Notwithstanding the terms of this letter? A. Notwithstanding the terms of this letter.

Q. You also sent out to your buyers, did you not, a copy of that letter? A. Yes, sir.

Q. Your instructions to your buyers, were, among other things, as follows: "We heartily agree with the policy outlined in this letter and call your attention specifically to the fourth paragraph. We shall expect everyone to adhere exactly to this declaration of policy." The fourth paragraph you read. You sent a copy of those instructions which you gave to your buyers to the Fashion Originators Guild of America, Inc., did you not? A. Yes, sir.

Q. And the purpose of your sending that copy of your instructions which you gave to your buyers to the Fashion Originators Guild was to show them how heartily you were in favor of the Guild policy, and how you were supporting it; is that so? A. That is correct. 2648

Q. That was sent, those instructions were sent to buyers for every single shop in these departments that you had? A. Yes, sir.

Examiner Bennett: Is that August, 1935, or August, 1933?

Mr. Weisman: August 8, 1933. That was the time that all of this happened, this file.

Mr. Haycraft: What do you mean, that is all?

Mr. Weisman: All of this correspondence passed back and forth.

Mr. Haycraft: And that was from the beginning of the relationship?

Mr. Weisman: That is right.

Mr. Haycraft: Lots of things happened since that time. 2649

Mr. Weisman: You may adhere to the idea that the world stands still, but if anything does it is yourself. I do not. I know the world goes on. Of course, there were further letters exchanged after that.

The Witness: Mr. Weisman, if I may interrupt, upon the advice of Mr. Haycraft, I have obtained the

sales sheets for the months of May and June, and through July 24, which you requested this morning. If you still desire them, here they are (witness hands counsel several documents).

By Mr. Weisman.

Q. Have you examined them? A. Well, they arrived while I was being cross-examined and you have kept me reasonably busy.

Q. In other words, you have not examined them? A. Well, you see me. I did glance through them in order to make sure that they were the right months.

2651 Q. Do they substantiate the testimony you gave this morning? A. I did not have time to check each department. The reason why it is so hard to answer this as to each account, or each department, is that each of these departments is not totaled and naturally I would have to check through each of them in order to find out, I have to check each department and even in some cases I would have to check the subdivision and add all of them up this year and last year, and check up my testimony this morning.

Q. I will go over them to-night and examine you with regard to them in the morning. I will do that rather than ask you to make the check. Inasmuch as I asked you for it I will do the checking myself and save you the difficulty of doing so. A. Thank you.

2652 Q. That will save you some trouble to-night. A. I only want to ask you one thing and that is this: When you do question me to-morrow, I would like to have the sales sheets in front of me so that I may observe them.

Q. I will bring them in. It may take an hour or so to go over this matter, and I would like for you to have them here at that time. A. That is just because I do not profess to know every figure of every department every month of every year.

Q. I should not expect you to. A. Thank you.

2653

Q. In 1933 were the reservations that you have expressed in effect? A. They were.

Q. Also, for the month of 1933, with those reservations that you have made reference to and expressed, there is no doubt that you were heartily in favor of the Guild program? A. As we understood it.

Q. Yes. Now, your reservations were not alone to the Guild program, but you say as "we understood it"; you mean as you understood the Guild program? Let us clear that up now. A. As we understood the purposes of the Guild; what they represented their method of working would be, and—that is all. That is the whole answer. I cannot think of anything else.

2654

Q. And your enthusiastic support, would such reservations as you may have manifested—namely, such reservations as manifested itself in writing in response to Respondents' Exhibit No. 8 in evidence and from there right on down through Respondents' Exhibit No. 12-D; those are the papers I showed you? A. What is that question again? I did not quite get it.

Q. And your enthusiastic support, with such reservations as you may have had, manifested itself in writings in response to Respondents' Exhibit No. 8, in evidence, right on down through Respondents' Exhibit No. 12-D. A. Yes, sir.

Q. That is the enthusiastic support which found expression in these letters continued right down through 1933; did it? A. Oh, yes.

2655

Q. It continued through 1934? A. Oh, yes.

Q. It continued through 1935? A. No.

Q. Let us see. A. Yes.

Q. In 1935 you were cooperating with the Guild, were you not? A. Yes.

Q. And you took advantage of the Guild offices for the elimination of copies? A. Yes, sir.

Q. You did? A. Yes.

Mr. Weisman: Let me have those papers, please.

Mr. Feldman: I will get them in a minute.

Mr. Weisman: While they are looking for them may I pursue another line of interrogation in order to save time?

Examiner Bennett: Yes.

By Mr. Weisman.

Q. If you found a competitor of yours was carrying a copy of what you believed was an original creation, you would notify the Guild? A. Yes, sir.

Q. You did that because you thought, I take it, that the
2657 carrying of copies by those competitors of yours, or original merchandise that you had, was not a fair means of his competing with you on that original?

Mr. Haycraft: I object as incompetent, immaterial and irrelevant to any issue in this case.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. In any event, you notified the Guild, is that so?

Mr. Haycraft: I object.

Examiner Bennett: That has already been answered. I think I will let him answer.

2658 *By Mr. Weisman.*

Q. Is that not so? A. Yes, sir.

Q. The purposes of your notification to the Guild was to obtain, if possible, the aid of the Guild in having that copy removed from sale; is that so?

Mr. Haycraft: Same objection and also the further objection that it is not proper cross-examination.

Mr. Weisman: I think it is proof of his enthusiastic cooperation.

Mr. Haycraft: It is not proper cross-examination on the the direct examination.

Examiner Bennett: I will allow the witness to answer the question.

Q. (Question read.) A. The purpose of calling attention of the Guild was to remove us from a competitive disadvantage.

By Mr. Weisman.

Q. When would you say was the last time you wrote the 2660
Guild advising them that a competitor of yours had a copy which ought to be removed? A. I should say that it was some time in the winter time.

By Examiner Bennett.

Q. What winter? A. The winter or the end of 1935, and the beginning of 1936, some time towards the end of 1935, about that.

Q. When you say "towards the end," do you not mean in the last month of the year? A. I mean, I said the winter, and that would have to be, winter around this part of the country is around December and January and February.

By Mr. Weisman. 2661

Q. Did you not in November and December complain that your competitors were carrying copies of Guild merchandise to the Guild? A. Somewhere around that time, what was it; November? I think it was December. Sometime around the winter time.

Q. I will show you some photostatic copies of letters of this complaint, dated—here is a complaint dated November 21. A. Yes.

Q. January 22. A. Yes.

Q. January 25. A. Yes.

Q. December 11. A. Yes.

Q. December 13. A. Yes.

Q. December 14. A. Yes.

Q. Do you recognize those as complaints that you sent in to the Guild? A. I do.

Q. As of those dates? A. Yes.

Q. So that in any event, even up to the end of the year, you still cooperated with the—in the year 1935—you were still enthusiastically cooperating with the Guild? A. I cannot answer that question.

2663 Q. Why, because you do not know how great your enthusiasm was? A. As you will recall your original statement, we were just as enthusiastic in 1933, 1934, 1935—well, we were not as enthusiastic at the end of 1935 as in the honeymoon days of 1933.

Q. You mean the "honeymoon" was all over? A. Well, we began to find out certain things. That did not mean we still could not use the offices of the Guild. We did. But, we were not as enthusiastic in the end of 1935 as we were in the beginning of 1933 or even the beginning of 1935.

Q. You still thought it was a good thing to notify the Guild of your competitors who had improper copies? A. One of the primary things——

Q. (Interposing) No. Did you still think it was a good
2664 thing to notify the Guild of those of your competitors who had copies of Guild merchandise? A. It was necessary.

Q. Necessary to your business? A. For our competitive position.

Q. And necessary that this copying of the Guild originations should, when you found such a copy, if possible be removed from competition with the original? A. If we were not going to buy the copy ourselves.

Q. Yes. You had expressed it as your policy that you would not buy copies yourself? A. Yes.

Q. Yes? A. Except for that reservation.

Q. Now, in or about the early part of 1936 you came—your store came to the conclusion that no longer you wished to cooperate with the Guild in its efforts to curb style piracy; is that so? A. What date did you name in your question?

Q. I said in the early part of 1936. A. Yes.

Q. And that policy manifested itself by the sending of a letter on February 14 by Mr. Riley, chief executive of the A.M.C. to the Guild; is that so? A. That was the culmination.

Q. Yes. In other words, on February 14, 1936, your accredited representative notified the Guild that he, speaking on your behalf, advised the Guild that you were no longer willing to cooperate; is that it; or words to that effect? A. Well—— 2666

Q. The fact is unimportant but the date is what I am trying to find out. A. You say that is the date; it is around that time. I do not agree with the statement of fact that you made.

Q. Then, shortly after that, after that letter was sent by Mr.—there is no doubt, is there, that Mr. Riley of the A.M.C. was acting, however, in and on your behalf and with your knowledge and consent? A. Mr. Riley acted for us and with our knowledge and our consent, we gave consent to what he was doing and we had knowledge of his acts.

Q. Mr. Riley was the chief executive officer of the A.M.C.; that is the concern about which you have testified before. A. Yes, to which you belong. 2667

Q. After you got that—after that letter on February 14 was sent out, you received a telegram from the Fashion Originators Guild of America, Inc., did you not? A. Yes, sir.

Q. Have you got that telegram here? A. No, sir.

Q. Did you ever show that telegram to Mr. Haycraft? A. No, sir.

Q. Will you not have it here to-morrow? A. If I can get it. If I can find it. As a matter of fact, I looked for it.

Q. You looked for it and could not find it? A. I know it is in existence.

Q. It may be lost; is that it? A. Well, it may be. The original telegram, I do not know whether I can get my hands on it or not in this other lawsuit you referred to; it may be an exhibit in that case.

Q. In any event, that telegram in words or substance requested you to say to the Guild whether or not Mr. Riley
2669 and the A.M.C. were authorized to speak on your behalf; is that so? A. We thought it was a little stronger than that.

Q. And may I say that I will read this and see if this will refresh your recollection— A. I think it said if we did not hear from you by some time to-morrow, or something like that.

Q. I ask you whether or not this will refresh your recollection as to whether or not with your recollection so refreshed you will say that this is the substance of the telegram that you received:

"February 6, 1936.

"William Filenes Sons Company

"Boston, Mass.

2670 "Referring following letter from A.M.C. signed by Riley."

Following then the quotation of the letter of Riley and then the telegram goes on:

"Please advise by wire Monday afternoon if your store is among the eighteen mentioned above. Full Guild membership meeting to-night to announce returns and declara-

tion of non-cooperating stores STOP If we do not hear from you we will assume Riley's letter applies to your store STOP Fashion Originators Guild Inc."

Is that the substance of the telegram except that in addition, for your information, there was quoted verbatim Mr. Riley's letter? A. Yes.

Q. Now, that telegram was sent to you on the 16th. A. You say it is the 16th?

Q. Yes. It said therein that we are—in words and substance that we are anxious to know whether or not Mr. Riley was authorized to speak for and on your behalf? A. Yes. 2672

Q. When you got that telegram did you reply to it? A. No.

Q. You did not? A. No.

Q. There never was a reply to it? A. There never was a reply.

Q. Notwithstanding the fact that you knew the telegram said that if you did not—if we did not hear from you we will assume that Mr. Riley is authorized to speak for and on your behalf? A. If we do not hear from you.

Q. If we do not hear from you the Guild might assume that Riley's letter applied to your store. A. It was rather short notice we felt. That is what I am trying to say. It called for pretty quick conclusions.

Q. As a matter of fact, so far as you were concerned, the telegram was unnecessary because Mr. Riley was authorized to speak for and on your behalf of Filenes Sons Company before he sent that letter out; is that so? A. The Riley letter did not necessarily convince us necessarily that we would be red carded. 2673

Q. I will ask you whether or not the Riley letter was authorized by you before it was sent out? A. Yes.

Q. There is no doubt about that? A. Yes.

Q. There is not the slightest doubt about that in your mind? A. No.

Q. There would be no difference in so far as you were concerned if you were to take ten months to reply, you could not have altered the fact? A. What?

Q. That Mr. Riley had been authorized to speak for and on behalf of Wm. Filenes Sons Company? A. Yes.

Q. And his action in sending that letter was in truth and in fact an action of Filenes Sons Company in so far as the letter was concerned? A. He did something that we approved of.

Q. And you approved it before it went out? A. Yes.

2675 (There was a discussion off the record.)

Examiner Bennett: We will stand adjourned now, gentlemen.

(Whereupon, at 4.45 o'clock P. M., July 27, 1936, the hearing in the above-entitled matter was adjourned.)

Court Room No. 5, Federal Building, Boston, Mass.

July 28, 1936.

Met, pursuant to adjournment, 9 A. M.

Before: JOHN W. BENNETT, *Examiner.*

2676 (Same Appearances:)

PROCEEDINGS.

Examiner Bennett: We will be in order, please. You may proceed, Mr. Weisman.

Mr. Weisman: Thank you. I just want to see what the last question was.

S. M. SEEGAL resumed the stand and testified further as follows:

Cross-examination (resumed) by Mr. Weisman.

Q. At the adjournment yesterday you had testified that the letter of Mr. Riley of the A.M.C. was sent out for and on behalf of your store, and that thereafter, irrespective of the time that might have been given you by the telegram to reply, there would have been no reply; do you recall that?

Mr. Haycraft: That is objected to, Mr. Examiner. That was Mr. Weisman's testimony; not the wit- 2678
ness'.

Mr. Weisman: Well, let us see.

Mr. Haycraft: It is not in accordance with the witness' testimony.

Mr. Weisman: Well, we have the testimony here. Well, rather than start arguing I will ask it, then. I thought we could save some time, but if you prefer it that way——

Examiner Bennett: Very well.

By Mr. Weisman.

Q. Mr. Riley was authorized to send that letter out on your behalf, was he not? A. That is correct.

Q. And the telegram which you received was asking you 2679
whether or not he was so authorized, was it not, among other things? A. Among other things.

Q. Yes. Among other things the telegram said: "Unless you notify us to the contrary we will understand that Mr. Riley is authorized to act on your behalf." Is that not what it said, in words or substance?

Mr. Haycraft: I object to the question, the telegram will speak for itself. This has all been gone over.

2680

By Mr. Weisman.

Q. Well, did you bring the telegram? You said you thought you would look for it. A. I thought you brought it yesterday.

Q. No, we read you a telegram. A. No, I would not—I do not know where the telegram is now. I did not understand I was to actually try to get it.

Examiner Bennett: It has been read into the record, I understand?

Mr. Weisman: Yes.

The Witness: I sent a copy.

2681

By Mr. Weisman.

Q. The telegram says: "If we do not hear from you we will assume Riley's letter applies to your store"; did it not? A. That, among other things.

Q. Now, since it did apply to your store, since this telegram was sent for the purpose of ascertaining whether or not Mr. Riley was acting on your behalf, and since he was, it was immaterial whether or not the telegram said "Advise by Monday afternoon if your store is among the eighteen mentioned," because it was; is that not so? No quarrel— A. It was not immaterial as reflecting the attitude of the Guild.

Q. No, I mean was it immaterial in so far as you were concerned, in so far as your reply was concerned?

2682

Mr. Haycraft: Objected to as irrelevant, immaterial. I do not see what it has to do with this case.

Examiner Bennett: Well, I will sustain the objection.

2683

By Mr. Weisman.

Q. Well, this telegram said——

Examiner Bennett: Well, if you want to find out whether Filenes regarded that as concluding your relations, why do you not ask him directly?

By Mr. Weisman.

Q. This telegram said: "Please advise by wire Monday afternoon if your store is among the eighteen mentioned above." Do you remember that? A. Yes.

Q. Now, as a matter of fact, your store was among the eighteen mentioned above; was it not? A. That is correct.

2684

Q. And the eighteen mentioned above were eighteen stores on whose behalf Mr. Riley had notified the Guild that those stores, acting together, would no longer cooperate with the Guild program looking towards the elimination of style piracy; is that not so? A. I cannot tell you about the other seventeen stores that acted, for instance—I mean, whether that was—I cannot tell whether Mr. Riley was acting for all the other seventeen, I believe he did, I can only answer that I believe he did.

Q. That is all I want to know. By the way, are you an officer of the A.M.C.? A. No, sir.

Q. Director? A. No, sir.

Q. You are assistant to Mr. Kirstein? A. Yes, sir.

Q. He is vice president of your company? A. Yes,

2685

Q. Is he an officer of the A.M.C.? A. Yes, sir.

Q. What office? A. Director.

Q. Director? A. Yes.

Q. Has he any other office? A. One of the offices not executive director.

Q. Does he hold any other office? A. In the A.M.C.?

Q. Yes. A. Why, he may be on the executive committee; he has been at times.

Q. Yes. Now, in your general knowledge of your business, and as assistant to Mr. Kirstein, do you not know whether or not Mr. Riley was acting on behalf of these other eighteen stores? A. Mr. Kirstein was out of town during that time, that this whole thing took place.

Q. I did not ask you that. I say, as his assistant, and with your general knowledge, do you know? A. I cannot answer that; he acted for the other stores, I believe.

Q. What is your best belief? A. I believe that he did.

Q. Whether these other eighteen stores for whom Mr. Riley acted at the same time he acted for you, if he did so act?

2687 Mr. Haycraft: I object, not proper cross-examination, and irrelevant, and immaterial.

Examiner Bennett: Well, I think I will sustain the objection. I think we are through with that.

Mr. Weisman: Exception.

Examiner Bennett: Yes.

By Mr. Weisman.

Q. In any event, do you know whether or not these eighteen stores all took the same type of action with regard to the Guild program, tending towards the elimination of style piracy?

Mr. Haycraft: Same objection. Before this case is through, Mr. Examiner——

2688 Examiner Bennett: Sustained.

Mr. Haycraft: —We will have all this evidence in.

Examiner Bennett: You do not need to argue.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Now, on your direct testimony you gave us some story about some wedding dresses. Were you personally familiar

with that transaction, your own personal knowledge? A. I don't know what is meant by—I am saying this in all honesty, too—I do not know what you mean when you say "personally familiar." We have the buyers up in tears in my office—the division merchandise manager in tears. I was not in the manufacturer's—I did not see the bridesmaids and the girl to be married, if that is an answer, why, I will cease.

Q. I want to know whether or not your testimony with regard thereto was merely based upon what somebody else told you?

Mr. Haycraft: I object to that, Mr. Examiner, as to the form of that, "merely based upon what some- 2690
body else told you," in view of the ruling.

Mr. Weisman (interposing): He was asked——

Mr. Haycraft: Just a moment, now, until I get through with this objection. You are constantly interrupting; it is getting very obnoxious.

Examiner Bennett: Just let me ask the witness a question. You testified as to certain facts about dresses, receiving only part of the dresses.

The Witness: Yes, sir.

Examiner Bennett: Did that information, whatever it was, come to you in the regular course of business?

The Witness: Yes.

Examiner Bennett: From some of your assist- 2691
ants, from some of your employees working under you, and your associated vice-president?

The Witness: Yes, sir.

Examiner Bennett: All right, I think that that—I will sustain an objection.

Mr. Weisman: Exception.

Examiner Bennett: I do not believe that that is material.

By Mr. Weisman.

Q. Do you know whether or not you ultimately got the dresses? A. We ultimately received the dresses by buying at retail.

Q. Do you know Hutzler Brothers of Baltimore? A. Yes, sir.

Q. Are they a member of the A.M.C.? A. Yes, sir.

Q. Did Hutzler Brothers of Baltimore, with regard to those wedding dresses, go to a manufacturer and purchase them ostensibly for themselves——

Mr. Haycraft: Objected to.

2693 *By Mr. Weisman.*

Q. —if you know.

Mr. Haycraft: Objected to as irrelevant and immaterial to the issues in this case; not proper cross-examination.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. I wish to make this offer of proof——

Examiner Bennett: All right.

Mr. Weisman: —in that regard, that if the witness had been permitted to answer that question I would have been able to show that these dresses ultimately came into these people—Filenes; that they

2694 were obtained by Filenes through fraud and deceit in that one of their other stores, Hutzler Brothers of Baltimore, who are federated together with them under this A.M.C. form of group purchasing and group buying, came into the manufacturer, fraudulently represented that since they were cooperating with the Guild in its style piracy program, that they wanted these dresses; that thereupon the dresses were sent to Hutzler Brothers and by Hutzler

Brothers reshipped to Filenes. I also say that this goes to the credibility of this witness.

Examiner Bennett: Yes. Well——

Mr. Haycraft: Mr. Examiner, I move to strike that statement made, the words "fraud and deceit" and "fraudulent."

Examiner Bennett: They may be stricken.

Mr. Weisman: Except.

Examiner Bennett: It is in the record for whatever proper use it should have. I think it is an abuse of the privilege of making an offer of proof.

Mr. Weisman: May it please your Honor——

Examiner Bennett: I do not think you have the 2696
slightest——

Mr. Weisman (interposing): That is the very thing——

Examiner Bennett: —ability to make the proof that you are offering.

Mr. Weisman: That is the very thing that I wanted to prove.

The Witness: May I address the Court?

Mr. Haycraft: Now——

Mr. Weisman: No; I object to the witness addressing the Court during my examination.

By Mr. Weisman.

Q. Mr. Seegal, at the present time do I understand that 2697
your store is handling copies of all kinds of merchandise?

Mr. Haycraft: I object to the question as irrelevant and immaterial, not proper cross-examination.

Mr. Weisman: I submit that it is very material.

Examiner Bennett: Well, I don't know that I heard that.

Mr. Weisman: Read the question.

(Last question read.)

By Mr. Weisman.

Q. Dress merchandise, I mean; I do not mean shoes or hosiery.

Examiner Bennett: I will let him answer. Overruled.

By Mr. Weisman.

Q. You may answer. A. I do not know whether or not we are handling copies of Fashion Originators Guild—is that included?

Q. Yes. A. Fashion Originators Guild dresses—we buy
2699 dresses without any part of my knowledge as to just exactly what the Fashion Originators Guild——

Q. So at the present time, whether or not you are handling copies of originations is a matter of complete indifference to you and to the management of your store; is that it?

Mr. Haycraft: That is objected to, if the Examiner please.

Mr. Weisman: I submit I am entitled to an answer on such a vital question.

Mr. Haycraft: Nothing to do with the issues in this case, Mr. Examiner.

Mr. Weisman: Yes, it has.

Mr. Haycraft: It has been reiterated and pointed
2700 out in the stipulation that was made here, whether or not these garments are copies has nothing to do with the issues in this case. The whole issue is the boycott, which does not make any difference whether this witness or his firm has any thought about it or whether or not they buy copies, or anything about it. The whole question as far as the issues in this case are concerned revolves around whether or not this firm was boycotted and the effect of that boycott.

Mr. Weisman: Well, in other words, in addition, as I understand it, it is in the Commission's presentation of this case, and the issues involved, it is totally immaterial whether or not the merchandise handled by this store and others are in fact copies of our style originations?

Mr. Haycraft: Exactly.

Mr. Weisman: Well, if that is so—I mean, I won't press that any further; I do not want to unnecessarily prolong this situation.

May I have a moment's time? My co-counsel——

Examiner Bennett: Yes.

(Mr. Feldman confers with Mr. Weisman.) 2702

By Mr. Weisman.

Q. On your direct testimony yesterday, Mr. Seegal, I understood you to say that there were returned 220 dresses which were copies of Guild merchandise?

Mr. Haycraft: Objected to, Mr. Examiner, as not correctly stating the witness' testimony.

Mr. Weisman: That is a foundation question.

Mr. Haycraft: I think it ought to be within the line of the record.

Mr. Weisman: I am coming to the next question.

Examiner Bennett: All right, I will hear it.

By Mr. Weisman. 2703

Q. That is the correct number, is it not? A. Yes, yes, at least that number, I believe I said.

Q. Well, I think you gave us that exact number. I think you were even kind enough to particularize that description, twelve to twenty. A. I meant to say it was at least that number; possibly more.

Q. You have in your employ a Mr. Shields? A. Yes.

Q. What are Mr. Shields' duties? A. He is a buyer of so-called machine-made dress department.

Q. And you also testified, I believe, that you passed on all returns? A. I pass on all—it is my—I pass on all returns either personally or through my assistants. I am responsible for them.

Q. And I assume that where a manufacturer objected to a return such objection would also come to your attention? A. I hope it does.

By Mr. Weisman.

Q. You know Miss Brady? A. Yes, sir.

2705 Q. She came into your store and saw you? A. Well, I—

Q. Or your assistants or your subordinates? A. Yes.

Q. She formerly worked for Filenes? A. Yes.

Q. And how long? A. Why, she was working there when I got there, which is 1924, and she worked—and she had worked, I believe, some time before that, and she worked there for several years—three, four or five years after that.

Q. And she was known to most of the people in the store, I take it? A. She was known to most of the people in the store who had—yes.

Q. Yes. A. And who dealt with her.

Q. And to most of the manufacturers? A. Yes.

Q. And these people also were informed that she was

2706 working with the Guild? A. Yes.

Q. And her work was openly done, was it not? A. Yes sir.

Q. I mean, there was nothing furtive about it, was there? A. I am not sure of the meaning of the word "furtive."

Q. Well, "secret," shall be say? A. Nothing secret about it at all.

Q. She came into your store openly and notoriously? A. I do not know what you mean by "notoriously."

Q. I mean, it was well known? A. Yes.

Q. I do not mean it in the colloquial sense; I mean it in the legal sense. A. I know colloquials, but legally I am not——

Q. Now that you know both, can you answer that, that she came in openly? A. Now that I know both, she came in legally and notoriously.

Q. And if you believed that a competitor of yours was carrying a copy of Guild merchandise, you would disclose that to Miss Brady? A. Yes, sir.

Q. And you would expect Miss Brady to go to the competitor, look at the garment, communicate with the New York office and generally ascertain the facts and then 2708
perhaps communicate, let us say, with the New York office? A. I would expect her to set the machinery in course.

Q. In operation? A. Whatever that method was.

Q. In other words, I take it, then, that Miss Brady was here to set in operation, to use your own phrase, the Guild machinery where a retailer sets forth that a competitor was having a copy? A. I don't think that was the primary purpose.

Q. Well, was that one of the purposes? A. Yes.

Q. That she acted upon? A. Yes, sir.

Q. Now, do you know whether or not Miss Brady was likewise known to all of your competitors generally in the same way that she was known to you?

Mr. Haycraft: I object; it is not proper cross- 2709
examination.

Mr. Weisman: If he knows.

Mr. Haycraft: No foundation laid.

Mr. Weisman: You brought out this Brady business. That is merely to tell the Commission——

Mr. Haycraft: I brought out this Brady business merely as to the witness' store, not others.

Mr. Weisman: Oh, let us see. You brought it out so an inference might be drawn from it.

Examiner Bennett: Well, I will let him answe the question.

Mr. Weisman: Yes.

A. I don't know how much my competitors knew, but I would have every reason to believe that they, at least were responsible,—officials in my competitors' stores were acquainted with that situation.

By Mr. Weisman.

Q. Yes. And before Miss Brady was employed by the Guild your store was notified, was it not? A. I believe so.

2711 Q. And do you not know that, as a matter of fact, as the result of your superior's suggestion, Mr. Kirstein, that Miss Brady was employed? A. I do not know that she was employed as a result of the suggestion. That I do not know.

Q. You do not know that? A. I don't know that she was and I don't know that she was not. I just don't know.

Q. I mean, you just have no knowledge upon it? A. No.

Q. Now, I remember that in one of the letters that you—that Filene sent to the Guild you stated—the letter stated that the stamp that you had proposed to use was even a more strict stamp than the Guild was asking you to use. Do you remember that letter? A. I do not remember whether we used the word "strict," but it was a different

2712 stamp.

Q. Well— A. —that we liked better.

Q. Well, let us see. Get me that letter. I will give you the exact wording. A. If you say it said "strict," I will accept——

Mr. Haycraft: It did say "strict."

By Mr. Weisman.

Q. It did say "strict." A. I will accept that.

Q. Then it is conceded that you in a letter stated that you were ready to use a more strict stamp than even the Guild wanted; is that not so? A. Yes, sir.

Q. Now, from August, 1933—I think that is about the time that this matter took place (handing letter to witness)—you see, we are correct; you say, "our suggested stamp was stricter than yours." A. That was three or four years ago.

Q. That is quite all right. A. If you say it is stricter, it is stricter.

Q. I just want to justify my question to you. You continued to use the stamp, did you not? A. Yes, sir.

Q. And you put it on all your orders? A. Yes, sir. 2714

Q. When you put that stamp on there you instructed your buyers that it should be on your orders? A. Yes, sir.

Q. And did you deem the terms of that stamp a part of the order?

Mr. Haycraft: I object to the question as irrelevant and immaterial, not proper cross-examination.

Examiner Bennett: Sustained.

Mr. Weisman: Yes, sir.

By Mr. Weisman.

Q. When you issued an order with that stamp on it, did you deem the terms of that stamp a promise by the merchant to whom the order was given that they would not send you any copies of Guild merchandise? 2715

Mr. Haycraft: Same objection.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Did you ever at any time authorize any of your buyers to state, in words or substance, to any of the

manufacturers to whom orders were given with the stamp thereon, that the manufacturer could disregard the promise or warranty embodied in the stamp?

Mr. Haycraft: Same objection.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Now, yesterday you did testify that certain departments were affected by the Guild policies; do you remember that? A. Yes, sir.

2717 Q. Now, this Guild policy just applied to dresses, did it not? A. No.

Q. Well, what else did it apply to? A. It applied to coats, high-priced coats and high-priced suits.

Q. Well, did it apply to gloves? A. No, sir.

Q. Did it apply to hosiery? A. No, sir.

Q. Did it apply to hair nets? A. No, sir.

Q. Did it apply to ladies' jewelry? A. No, sir.

Q. Did it apply to yarn? A. No, sir.

Q. Did it apply to ladies' knit underwear? A. No, sir.

Q. Did it apply to ladies' union suits? A. No, sir.

Q. Would you say that it applied to boys' furnishings? A. No, sir.

Q. Would you say that it applied to men's furnishings at all?

2718 Mr. Haycraft: I am going to object.

A. No, sir.

Mr. Haycraft: The witness can testify as to what it did apply to without going into all this detail.

Mr. Weisman: Wait a moment. This is very material.

Examiner Bennett: All right, I will let him go ahead.

Mr. Haycraft: This is a big store, there are a lot of things in the store.

Mr. Weisman: Well, you brought it out on your case in New York and you brought it out here.

Mr. Haycraft: The case in New York is not here.

Mr. Weisman: Wait a moment. I do not want to argue any further. Make my friend keep still.

By Mr. Weisman.

Q. It did not apply to men's suits? A. No, sir.

Q. And it did not apply to men's bathrobes or trousers? A. No, sir.

Q. And it did not apply to the manicuring departments 2720
in your store? A. No, sir.

Q. Or permanent waving? A. No, sir.

Q. It certainly did not apply to the restaurant? A. No, sir.

Q. It did not apply to the infants' wear? A. No, sir.

Q. And it certainly did not apply——

Examiner Bennett: Do not try to make it absurd, Mr. Weisman.

Mr. Weisman: How?

Examiner Bennett: I say, do not try to make it absurd. We are making a record.

Mr. Weisman: No; if you will permit me, these are merely foundation questions and I am going to show that they are very material and not going to 2721
absurdities.

Examiner Bennett: All right.

By Mr. Weisman.

Q. And they did not apply to infants' dresses—did I ask you that? A. If you did, I will answer it twice: no.

Q. No. Nor coats? A. What kind of coats?

Q. Infants' coats? A. No.

Q. Or infants' knitwear? A. No.

Mr. Hayeraft: May I move to strike all this cross-examination.

Mr. Weisman: Wait a moment. I am not finished.

By Mr. Weisman.

Q. It did not apply to misses' skirts and dresses, did it? A. Misses' skirts and dresses? Misses' dresses it must have applied.

Q. No, just misses' skirts; I beg your pardon. A. Misses' skirts, it did not apply.

2723 Q. And you would not say that it applied to misses' knit dresses? A. Yes, it does apply to misses' knit dresses.

Q. Yes. A. In the high-priced range.

Q. Well, did it apply to women's skirts where the skirts were sold alone? A. It did not apply to women's skirts.

Q. Did it apply to women's blouses? A. No, sir.

Q. Did it apply to women's sweaters? A. No, sir.

Q. Did it apply to misses' inexpensive coats? A. No, sir—it might have in a very slight extent.

Q. Very slight. A. If this was a copy of a style origination, Fashion Originators Guild high-priced coat, but the effect would not be terribly great.

Q. Would you say this applied to little women's inexpensive coats? A. On the same basis that the other coat department——

2724 Q. Very slightly, if at all? A. Yes.

Q. Would you say that it applied to women's cotton underwear? A. No, sir.

Q. Would you say that it applied to women's extra-sized underwear? A. No, sir.

Q. Or misses' and girls' underwear? A. No, sir.

Q. Or would you say that it applied to girls' dresses, seven to fourteen? A. No, sir.

. Would you say that it applied to misses' hats? A. sir.

. Now, these items that I have enumerated to you, they generally regarded as accessories in the ladies' ready-ear stores? A. No, they——

. How do you regard them, the vast majority of them? Well, the gloves and hosiery, and departments like t, are commonly referred to as accessories.

. Yes, but any of those small departments are acces-ies, but some departments you spoke about, I believe, e misses' coats and departments like that, that are tinctly garment departments. A. Yes. The larger part the departments—— 2726

. Well, these are either accessory or garment depart-nts; is that correct? A. They are either one of those. ne are one and some are the other.

. Would these departments ordinarily follow the gen-l trend of your business? A. Not every individual partment, no, sir.

. No, I do not mean every individual department, but departments generally, as a whole, let us say. A. The partments in total that you would have mentioned——

. Yes. A. —might follow the trend, although there are es when they do not.

For example, it is well known to all retailers that some-es you may have a good garment business and an acces-y business little, a certain time of the year, or vice versa, 2727 ne times of the year—Easter, for example.

. What time of the year would you say that was true? We all know, for example, that just prior to Easter are apt to sell more accessories than garments: this man likes to buy a garment, maybe, a couple of weeks ore Easter and then pick up her accessories which finish a garment for Easter; so if you take an individual rt period of time you have that problem, and also, in

general, there are whole seasons when it is a bad dress season or a bad coat season or a bad accessory season. They do not always go together. Men's business, for example, during the early part of the depression, was notoriously worse than the women's business. There are some general statements like that. In order to avoid any future lack of credibility in my testimony, I want to be very accurate.

Q. Now, in other words, you are now seeking to justify your subsequent credibility? A. I would like to answer that if you would only give me an opportunity.

Q. Well, I have asked you. I say, you are now seeking
2729 to justify your credibility as to some future questions that I am about to ask you; is that so? A. No; the past, the past. I should like some opportunity to answer your statement about my lack of credibility which you——

Q. I have not said anything about your lack of credibility.

Mr. Haycraft: Yes, you did.

The Witness: Yes, you did, and I hope you will give me an opportunity, if I may address the Court——

Mr. Feldman: He had not even been sworn yet.

The Witness: I was sworn yesterday, I believe.

By Mr. Weisman.

2730 Q. Is it that you feel that these questions I have just asked you may make it apparent that something you said yesterday does not appear to be a fact? A. No, no. If you will let me speak freely——

Q. No, I want you to answer my question. That was not in your mind? A. The answer is "No."

Q. You do remember making the statement yesterday that the dress business in those departments that were affected by the Guild did not show the same in the trend

as the other departments in your store? Do you remember stating that, in words or in substance? A. I did not make that statement.

Q. You did not? A. I did not.

Q. Is that a fact? A. Is what a fact?

Q. Well, that since the Guild program, or since you have not been co-operating, is your business in those departments which are affected by the Guild program poorer than your other general business?

Mr. Haycraft: Objected to, Mr. Examiner, as not proper cross-examination or——

Mr. Weisman (interposing): Oh——

Mr. Haycraft: —and as irrelevant and immaterial, as to the form of the question. If you will get it there, there was no question propounded on direct examination and we are not interested, as far as this case is concerned, in the time that this store stopped co-operating. The whole thing revolves around the time it was red carded by the respondent. Unless the question includes that date or that time, I object to it. 2732

Mr. Weisman: Do you want me to argue that? Your Honor remembers very distinctly the question, "What was the effect upon your business?"

Examiner Bennett: Yes, I remember how distinct that question was.

(Last question read.) 2733

Examiner Bennett: I will overrule the objection.

A. Certainly in the dress departments, which we discussed yesterday, since March 1, which was when the Guild program started to affect us, the red carding started to affect us, was worse than main store business.

By Mr. Weisman.

Q. Well, now, let us see— A. Compared to the previous year.

Q. You also testified, did you not, that for the month of July, the existing month of July, your business in volume in the affected departments was about the same for this year as it was last year? A. I believe my statement was that it was either a little better or a little worse.

Q. That is about the same. A. Yes, but I wanted to use the exact words.

Q. Now, just take a look at your reports for July and answer these questions (handing papers to witness):

2735 What was your total volume for the month of July on gloves, for the twenty-four days of July, 1935?

Mr. Haycraft: I am objecting to the singling out of gloves.

Mr. Weisman: I am not going to single them out; I am going to take one at a time.

Mr. Haycraft: Just a moment. Let me finish my objection.

Examiner Bennett: Wait.

Mr. Weisman: I beg your pardon.

Mr. Haycraft: I object to the singling out of the gloves, or any of the other single departments that he has mentioned in his line of cross-examination as not proper cross-examination. As the witness

2736 has brought out just a moment ago, on the comparison which he made and which he is entitled to be cross-examined on, that is a comparison between the affected departments and the main store.

Now, I have no objection to a question of that kind being put here, and he can cross-examine to the fullest extent on that comparison, but to go and single out numerous single departments is just like setting up a lot of straw men and then knocking

them down. They have no probative value in this proceeding and it is not proper cross-examination.

Mr. Weisman: Of course, your Honor, it is perfectly apparent that the only way of cross-examining a witness when he makes a particularly direct statement like that is to take the particular items. I have particularized them to a degree where your Honor, not knowing where I was driving, asked me not to be ridiculous.

Examiner Bennett: If you particularize and summarize them, we will get through——

Mr. Weisman: I am.

Examiner Bennett: This is for July only. As 2738
I understand it, you have been over all the other months.

Mr. Weisman: No.

Mr. Haycraft: No, never even went into, Mr. Examiner.

Examiner Bennett: I beg your pardon.

Mr. Weisman: I expect I may at this time take the month of July because it came first to hand. I propose to show on the figures of this store that in every kindred department with——

Examiner Bennett: Yes, but you have figures from several of the months and have them summarized. Now we are not going to go over that again.

Mr. Weisman: No, no, of course not. I am not 2739
going to reiterate that. This is something that we have not touched yet.

Examiner Bennett: All right.

Mr. Weisman: You remember.

Examiner Bennett: Go ahead, I am not stopping you.

Mr. Weisman: Oh.

Mr. Haycraft: Just one more observation, Mr. Examiner, in an attempt to save time. I will agree that the exhibits to which the attention of the witness for the Commission has been drawn, the statements he has identified and any statements he brought in yesterday or turned over to counsel yesterday, may be received in evidence and made a part of this record so that the Commission and counsel for both sides may use them in any way they see fit.

Mr. Weisman: Well, I don't——

Mr. Haycraft: But going down the line and
2741 taking the various departments of the store singly and one by one and making comparison in this way is a thorough waste of time.

Mr. Weisman: I think the Commission has already ruled and I object to this reiteration of an argument.

Examiner Bennett: There is only one question as I understand it. There is an offer by counsel for the Commission. Do you want to accept the offer?

Mr. Weisman: No, your Honor. I do not think it is a proper offer.

Examiner Bennett: Go ahead with your cross examination.

Mr. Weisman: All right.

2742

By Mr. Weisman.

Q. Now, looking at that, will you tell me what business was done in July, 1935, for the twenty-four elapsed days? A. The glove department?

Q. Yes. A. $8,663.

Q. Oh, I mean first pick out your junior gloves. A. Junior gloves?

Q. Yes. A. That is one subdivision.

Q. Yes. A. $779——

Q. No, no, for 1935. A. $1,202.

Q. And for 1936? A. $779.

Q. A drop in 1936 of about how much per cent.? A. Those questions are hard to answer.

Q. About 40 per cent.? A. Thereabouts.

Q. Now, fabric and linen gloves, what did you do in July, 1935?

Mr. Haycraft: Now, Mr. Examiner, I wish to renew my objections and add this objection, that there is no foundation laid; the testimony of this or any other witness that there is any relation at all 2744
between gloves, for instance, and women's dresses, the things that are involved in this proceeding——

Mr. Weisman: Of course there are.

Examiner Bennett: All right, Mr. Weisman.

Mr. Weisman: Your Honor has ruled.

Examiner Bennett: I acept the responsibility.

Mr. Weisman: May my offer of proof also include the fact that I intend to make like and similar proof for the month of June, 1935, as against June, 1936, and that an examination of the business done in these particular departments before enumerated with regard to July would have shown a similar or like falling off of the business of this company, and that my proof would also have shown a similar 2745
situation with regard to these departments when May, 1936, would be contrasted with May, 1935?

Examiner Bennett: Yes.

Mr. Weisman: That is all.

Examiner Bennett: If you have precise proof, it would be immaterial and irrelevant in meeting the particular issue intended to be met.

By Mr. Weisman.

Q. Now, with regard to the particular departments affected by this Guild policy, I think you have testified yesterday that those departments were under Mr. Zerkowsky; is that correct? A. Well——

Q. One of them? A. Yes.

Q. And then another was under Mr. Gross? A. Yes.

Q. And then another was under Mr. Drew? A. Yes.

Q. And that later you had put in a Mr. Lacy in some departments; am I wrong about that? A. No, I made no such statement.

Q. What department is Mr. Lacy in? A. Primarily the
2747 so-called accessory departments; not all of them, but very large percentage. He has the street floor and some of the upstairs' departments; but primarily street floor accessory departments is Mr. Lacy's division.

(There was a short recess taken.)

Examiner Bennett: We will be in order, please. You may proceed.

Will you come around, please, Mr. Seegal?

By Mr. Weisman.

Q. Now, is it a fact that in these—have you got your summary of your report for the twenty-four elapsed days of July, 1936, before you? A. Yes.

2748 Q. Take a look at them. A. Yes.

Q. Yesterday you testified that the departments which were affected by the Guild policy either were a little behind or a little ahead. A. Yes.

Q. Can you tell us whether or not these departments in 1935 did $451,251 total volume? A. Yes—you have not used the total that I referred to yesterday. The total I had reference yesterday was the total of the upstairs stores, including—that also includes these shops in there.

That does not include any big places like Worcester or R. H. White & Company or others. Let me see. Last year was $569,397.

Q. What? A. $569,397.

Q. And the other year was? A. $618,166.

Q. That is a gain of— A. 8.6 per cent.

Q. 8.6 per cent.? A. Yes.

Q. Now, the same examination, if you please, for the month of July, 1936, as contrasted with July, 1935. What was the total for last year? A. That is what I just gave you.

Q. Oh, I made a mistake. Have you got it for June? I thought I was asking you for June, but I evidently said July. 2750

(Question read.)

Q. Maybe I can help you. A. Perhaps you can.

Q. Look at this here and see what this is. A. Oh, I see what you are referring to now.

Q. Can you give it to me now? A. Yes.

Q. Do so. A. $1,085,926.

Q. Was the figure for last year? A. Yes.

Q. What is it for this year? A. $1,208,453.

Q. A gain of how much? A. 11.3 per cent.

Q. 11.3 per cent.? A. 11.3 per cent.

Q. Contrasting May, 1935, with May, 1936, have you got that here? A. Yes. 2751

Q. Turn to May. A. Yes.

Q. Yes. A. $1,072,150 last year.

Q. And this year? A. $1,148,436.

Q. In other words, a gain this year of how much? A. 7.1 per cent., if my arithmetic or my mathematics are correct.

Q. 7.1 per cent.? A. Yes.

Q. If your mathematics are correct, what was the total gain of the store generally, including these departments, R. H. White, Filenes and everything?

Mr. Haycraft: I object to that as not proper cross-examination, as incompetent, immaterial and irrelevant. The witness in his direct testimony made his comparisons with the main store and I submit that he should be interrogated on that particular situation and not on something else.

Examiner Bennett: You can direct your question to the actual comparison made by the witness on his direct testimony.

By Mr. Weisman.

Q. Is your figure for the main store Boston? A. Total
2753 for above, because I eliminated the men's store in order to make the figures more comparative. I used this figure of "total above," which precedes the men's store.

I believe that the record is incorrect. There are two mistakes which I find in the record. I said "11.2." I believe you read it just now as 11.3.

By Mr. Weisman.

Q. You gave it to me as 11.3 per cent. A. I read it incorrectly, then.

Q. No, it is 11.3 per cent. Here it is. You said 11.3 per cent. and it is 11.3 per cent. A. So it is. So it is. The reason I read it that way was because there are two separate sheets. One is—well, excuse me. We will excuse
2754 that.

But the statement regarding the $451,000, I would like to have that read to me again. The question that I made my statement to of "yes."

(The following question and answer were read:

"Q. Can you tell us whether or not these departments in 1935 did $451,251 total volume? A. Yes—you have not used the total that I referred to yester

day. The total I had reference yesterday was the total of the upstairs stores, including—that also includes these shops in there. That does not include any big places like Worcester or R. H. White & Company or others. Let me see. Last year was $569,397.

"Q. What? A. $569,397.")

The Witness: I said—no, that does not refer to the departments which were affected by the Guild, by the red-carding. That merely represented the total figure for a part of the upstairs store which Mr. Weisman called my attention to. It has no significance here at all. 2756

By Mr. Weisman.

Q. The figures which have significance, I take it, are the $569,397? A. Those have significance for the total of the above store, but I have not given you the total for the other departments themselves because I presume you had not asked for them. That is the reason I do not think I got them up.

Q. You did not? A. No.

Mr. Weisman: Then I ask that all of this testimony be stricken out as something that I did not ask him for. It seems to me that he is a perfectly competent person and it seemed to me at the time that he was a perfectly competent witness to answer 2757 that question. I think he understood what I was saying.

The Witness: I answered every question you asked me.

Mr. Weisman: I am not talking to you. I move that it be stricken. I ask that all of this testimony be physically stricken from the record.

Examiner Bennett: It will not be physically stricken from the record. We will have a recess for five minutes.

(There was a short recess taken.)

Examiner Bennett: We will be in order, please. You may proceed.

By Mr. Weisman.

Q. Yesterday you were kind enough to bring in for Mr. Haycraft Commission's Exhibit No. 357, which is a list of members of the Fashion Originators Guild, members—or rather firms which you believe were at one time or
2759 another members of the Fashion Originators Guild? A. Yes.

Q. You do not know whether or not these people were members of the Fashion Originators Guild in 19—in February, 1936, do you? A. No, sir, not that, but I would not want to guarantee the accuracy of it at any one time; but it is my belief that at some time or another they were members. I have a list of those from which we purchased that I would be positive absolutely of.

Q. What is that? A. I have a list of the Guild manufacturers from whom I purchase merchandise that I think would be authentic, but your list, I should think, would be the best.

Q. Would you let me see the list that you now refer
2760 to? A. What is that?

Q. Would you let me see the list that you now refer to? A. It is a part of my answer to the Federal Trade Commission and I would like to have you just look at that list, if you will, and not the rest of it.

Q. I will not look at the rest of it unless you want me to. A. I do not think it would help you or hurt you. That may have been drawn off at different times, different from the other list, so there again you may have one list probably longer than the other.

Q. This also is headed "Names of Manufacturers Affiliated with the F.O.G.A.," which is the Fashion Originators Guild of America, I take it? A. Yes, sir.

Q. "From Whom We Purchased Dresses"? A. Yes.

Q. The question I asked you is whether or not you have not or whether you have any list showing members of the Fashion Originators Guild at March, 1936, not a list of people that you may have purchased dresses from over a period of five years which may or may not have been at one time members of the Fashion Originators Guild of America, Inc. Have you such a list as that? A. I have no such list.

Q. So, in other words, this Commission's Exhibit No. 357 was not intended by you as being a list of people whom you claimed to be members of the Guild and who on or about the month of March, 1936, you were purchasing merchandise from; is that it? A. I should say that list was Guild people, Guild members, from whom we purchased merchandise somewhere around that time and the other list I gave you gives the exact people and this list here—well, this is something else. This is another list. We will just pass that. Here's the list you referred to. 2762

Q. Do you know whether or not Ann Goshen has been a member of the Guild for the last three years? A. I could not answer that question, nor could I answer any question like that, either.

Q. In other words, is it not a fact then that Commission's Exhibit No. 357 is merely a list of people with whom you had done business with over a period from 1933 to the early part of 1936 and who you believed to be members of the Guild? A. May I see that? 2763

Q. Yes (counsel shows the witness Commission's Exhibit 357). A. This list has at the head of it, sir, the following statement: "Guild Houses With Whom We Have Done Business During 1935-1936," up to around May or March, I should say.

Q. You do not know any members therein shown were members of the Guild in March, 1936? A. I could not answer that with accuracy, no, sir. I think probably most of them.

Q. Have you examined the Guild roster? A. Yes, sir, I have on occasion.

Q. Have your ever compared that with the Guild roster? A. No, sir. Not with that particular one, no, sir.

Q. Do you think you ought to ask us to give that a proper place in a solemn judicial hearing of this character, a list of that character? A. I——

2765 Mr. Haycraft: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Have you a list of the dress manufacturers with whom you have done business since March, 1931? A. Is there anything on that? May I see that? I do not see it on it.

Q. No, I do not think so, but I have not read it. A. I do not think so. I do not see any on it. I have no list of manufacturers, non-Guild manufacturers, with whom we have done business since we were red-carded. Naturally, such a list could be obtained.

Q. Will you get it for me during the lunch period?

2766 Mr. Haycraft: I object to that.

Mr. Weisman: Object to what? Object to my asking the witness if he will get me something?

Mr. Haycraft: I object to producing this list requested by counsel for the respondent.

Examiner Bennett: I will give the witness such instructions as I thought necessary yesterday, and that will stand for to-day.

The Witness: I will go by the advice of Mr. Haycraft.

By Mr. Weisman.

Q. Well, Mr. Haycraft, he has not given you any advice on this matter. A. I will go by what I think his opinion is.

Q. What do you mean by that? A. He has made a statement to the Court that he objected to the production of that evidence in this hearing.

Q. You believe that if because Mr. Haycraft objects to you giving me any information in this case which might be of information to the Commission, that he can decide that matter for you, and that you therefore, should decide 2768
not to give this information to me? A. If the Commission wants that, I will give it to them.

Q. Suppose I ask you to bring the list in because I believe it will be informative for the Commission. You believe that Mr. Haycraft wishes that information to be suppressed from the Commission and yet you will not bring it in? A. Not by the Commission. I probably used the wrong term. I believe it is the Examiner. If the Examiner believes it will help him in his judgment, I will bring it in.

Examiner Bennett: I have instructed you the Examiner is not deciding that particular thing for you. As I understand it, he said he wanted to get this document from you, and I told you that you 2769
were not under any obligation to do so because of the fact that you appear as a witness for the Commission; but if you wish to do so, that is, if you wish to accommodate this attorney, the Examiner has no objection. That is the whole of his instructions.

Mr. Weisman: This attorney wishes to add that he wishes to be co-operative with you and we do

not want to subpoena all of these documents and records under a subpoena duces tecum on our case, but if you see fit not to comply with our reasonable request you will have under our subpoena duces tecum no other choice but to comply, because you will force us under that determination of yours to no other alternative but to apply to the Commission in due course in the presentation of our case to ask for a subpoena duces tecum to get these books and records of your business here.

Mr. Haycraft: My objection to the request was that it is immaterial, incompetent and irrelevant
2771 and not proper cross-examination. Any private arrangement, of course, that counsel for the respondent wishes to make with Filenes when he comes around to his defense in this case I have no objection to.

By Mr. Weisman.

Q. Look, Mr. Seegal, this is a very simple matter. You have a list of the manufacturers you are doing business with, have you not, handy? You know who they are? A. We have our books which show that.

Q. It would be a simple matter to get it up? A. Oh, a few hours.

Q. Will you, as a lawyer to a gentleman— A. Yes.

Q. —get me such a list so we can put it before the
2772 Commission? A. As a gentleman to a lawyer, I will give you that list if you will give me a chance to answer to your remarks this morning about——

Mr. Haycraft (interposing): I object to that. I do not think we should give the admissibility of evidence its test by any private arrangement between the witness and counsel for the respondent.

Mr. Weisman: You see, Mr. Haycraft does not want to do it. He will get it in when our case comes, but it seems to me much more simple to get it in now.

Mr. Haycraft: I will take care of that when the time comes. It seems to me that, in addition to the objection which I have already urged as to this particular thing, that the list of manufacturers with whom Filenes are doing business now is a highly confidential document and one which I think Filenes should be given opportunity to consult their own attorney before they divulge it. I do not want by my silence to put Filenes in that position at 2774
this time.

Mr. Weisman: You are dealing with it here all day and now you do not want to get the evidence in. I ask your Honor to take notice of this fraction of facts which will give a clear picture to the Commission. I think it is highly improper.

Mr. Haycraft: I object to such a statement as that.

By Mr. Weisman.

Q. Since 1936, in March—since March, 1936, you have been purchasing your dresses from non-Guild manufacturers? A. Yes, sir.

Q. Now will you or will you not give us, for the purpose 2775
of placing it before the Commission, the list of the manufacturers with whom you have been doing business? A. This list, if it would be kept confidential and no opportunity given for its publication among the trade, I would be willing to give it to you.

Q. I give you my promise, with the consent of Mr. Haycraft and with the consent of the Examiner, that such list will be kept confidential, that I shall on my part instruct

the reporter not to disclose it to anybody other than the Commission and counsel for the Commission and myself, and as for myself I will hold it secret.

Examiner Bennett: I shall instruct the witness that he is testifying for a public record which is open upon proper application to any party, any member of the public who can show that he has business in seeing it.

The Witness: On that basis, then, I will have to ask the advice of Filenes counsel and also the public relationship people or publicity manager, to see whether any great harm will ensue in disclosing
2777 the Filenes sources of supply.

We had a very hard time in building this up and now to disclose this might conceivably—I will not say definitely, but might conceivably work a hardship on us. In any case, I would want to be advised by counsel.

By Mr. Weisman.

Q. You mean by that that you are pretty solidly lined up wi h your sources of supply now, are you not; you are not afraid that you are going to lose them?. A. We have not been so very successful in building them up, as the July, May and June figures, and so forth, will show.

Q. What months do you refer to as "and so forth"?
2778 A. Well, July. As the July, May and June figures will show.

Q. But you have lined them up pretty solidly. You are not afraid that you are going to lose them now? A. We have not been very successful in building them up, as I said before.

Q. Do you know whether or not your company does business with Noxall Dress Company?

Mr. Haycraft: I object. Apparently there is going to be a long list read here and the witness asked about each one of them. I object to it.

Examiner Bennett: I shall sustain to bringing in by indirection that which you could not bring in by direction.

Mr. Weisman: The witness will not give me the information and I am simply taking this list and asking him if he has bought from any of these people. I think I am entitled to that information.

Examiner Bennett: You do not have any business with it as far as cross-examination is concerned. It is wholly irrelevant. 2780

Mr. Weisman: I respectfully except, if your Honor please.

Examiner Bennett: It may be all right in your direct case. I am not questioning that. You present your own case, but it has no part of the cross-examination.

Mr. Weisman: I respectfully except to your Honor's ruling. I shall make an offer of proof that if I had been permitted to go into this cross-examination I would have been able to show that the store in question is able to get from and has built up a complete and adequate source of supply and is receiving the merchandise that it requires and that the facts in and of being red carded by the Guild have had no detrimental effect upon its business or upon its purchasing power or ability to buy properly in the markets. 2781

Examiner Bennett: All right.

By Mr. Weisman.

Q. On your direct examination you stated that there was a delay of three weeks in your getting the dresses? A. I believe I stated that somewhere around three weeks.

Q. As a matter of fact, in the exercise of your function in passing on these orders do you not know that these orders were for three weeks' delivery? A. I should be very surprised if the records of the files show that the merchandise that we had on order at that time were, every item, exactly for three weeks' delivery.

Q. May I see what you know about it? One of these orders was placed with the Junior Frocks, Inc., was it not? A. I do not know. You have got to figure on the size of our business. If I can remember each order since that time, I would certainly be remarkable. We have done several million dollars worth of business, which means
2783 several thousand orders, and I cannot remember it.

Q. Do you know whether or not when all of those orders were placed—one of those orders was placed—with Keene, Wylie & Company? A. I do not know, but I expect I may be able to assist you. I think I am going to assist you. I have the names of the people with whom we had orders placed.

Q. Beware of Greeks who come bearing gifts. A. Well, we will just call this a trade.

I have a list of the names of people who owed us merchandise at the time that we were red carded, yes, so I think I can answer all of your questions on that.

Q. Will you give this to me without any strings tied to it? A. Yes, I will give it to you.

Q. Now let us see whether or not you know the facts.
2784 You know a good deal or you think you know a good deal of or about the dress business from manufacturing to retail, do you not? A. I believe I know something about it.

Q. You do not think you would be occupying the position that you do if you only knew something; we all know something. You are generally acquainted with the situation from manufacturer to retailer? A. The answer to that question, the second question, is "Yes."

Q. Well, I am trying to find out what you know; I am trying to qualify you. I want to show that you know what you are talking about.

Mr. Haycraft: We will admit the qualifications.

By Mr. Weisman.

Q. Can you answer that? A. I like the second question much better.

Q. You like the second question much better? A. Yes, sir.

Examiner Bennett: The objection by Mr. Haycraft is overruled. 2786

By Mr. Weisman.

Q. We will not spend much time on that. Now, generally, as you have told it to us, do you know in the dress business for the spring line that deliveries of merchandise are generally made and orders generally taken covering a period of about three weeks, that is, the general and the usual and the ordinary minimum requirement by the manufacturers, namely, that he have about three weeks to make up and ship or deliver your order? A. In lower-priced dresses the period is much shorter than that and in our higher-priced dresses it is much more than that.

Q. I am trying to get the average time. A. I should personally say two weeks for our business, for Filenes 2787
business. Two weeks would be more nearly what our actual delivery date is.

Q. Let us see that list with your orders on it, please. A. Here it is.

Q. I notice that one of the manufacturers was Milton Altmark? A. Yes.

Q. Do you know what priced merchandise wholesale they handle? A. I would have to look that up.

Q. Well, would you believe me if I were to tell you it is about $16.75 to $27.75 wholesale? A. I will.

Q. You will? A. Yes.

Mr. Weisman (addressing one of his colleagues): That is correct, is it?

The Witness: Well, if you are going to ask him be sure about it if you want me to be sure.

By Mr. Weisman.

Q. He is a client of mine. I think that is true. A. I will take your statement for it subject to correction.

2789 Q. How long will you say a manufacturer in the $16.75 to $27.75 or $22.75 wholesale price takes for the delivery of his merchandise in the ordinary course of business? A. Anywhere from four weeks to five weeks, and rarely, at the beginning of the season, six weeks.

Q. So that we have from four weeks to six weeks? A. Yes, sir.

Q. Now, referring to Adler & Adler——

Mr. Haycraft (interposing): I am going to object unless this exhibit goes in so that we can have something to work on.

Mr. Weisman: We do not have anything to work on now. I am not reading from an exhibit. I am asking the witness a definite question as to definite concerns and I am not making any reference to any

2790 document.

Mr. Haycraft: There is a paper in his hands which the witness gave him that he is referring to.

Mr. Weisman: I am not referring to any paper. I am asking him a direct question.

Mr. Haycraft: I object unless the paper is introduced in evidence.

Examiner Bennett: If you can ask the question without referring to the paper.

Mr. Weisman: You are surely not trying to restrict me in looking at the paper or notes which I have in my hand, are you, Mr. Examiner?

Mr. Haycraft: Let the witness have the paper back if you are not going to offer it in evidence.

By Mr. Weisman.

Q. Have you got a copy of this? A. No, sir.

Mr. Weisman: One of you boys copy this paper now.

(The document was handed to Mr. Weisman's associates, who began to copy same.)

2792

Mr. Haycraft: I do not object to the paper.

Mr. Weisman: I am going to show you that every one of these houses was a high-class house.

Mr. Haycraft: I asked that the paper be returned to the witness if it is not going to be introduced in evidence. I insist that it be given up right now.

Mr. Weisman: Look here, you are not going to usurp the position of the Commissioner or the Examiner in this court. Merely because you happen to be counsel for the Commission does not mean that you are going to direct the actions of counsel for the respondent with something which certainly is of no concern of yours.

2793

This is a personal matter between the witness and myself. The witness said he would give me something and he would give it to me unqualifiedly. I asked him particularly about that. He gave it to me as a favor to me. He said he was going to help me without any reservations. You ought not to try to make trouble that way when there is no necessity for any interruption of my examination of the witness. If the witness wants to give me something,

he has the right to give me something. He has given it to me and now it is mine. I do not see why I should offer something in evidence which is mine if I do not want to. I do not choose to do so now.

Mr. Haycraft: I will ask the Examiner to direct counsel for the respondent that this paper either be returned to the witness or offered in evidence so that we can determine what the basis of these questions is. It seems to me that this is entirely improper. If this document is going to be used as a basis for questions to this witness, then this document should be introduced in evidence. It has been
2795 referred to in questions by counsel and I insist that it either be offered in evidence or returned to the witness.

Mr. Weisman: I submit you are entirely wrong. The witness gave me this paper. I have in my hand documents which I am using as notes and I am making no reference to any paper in the questions which I am now asking the witness. Each question is a direct question, do you know so-and-so and what kind of dresses do they make. I make no reference in the question to the paper I have in my hand.

Examiner Bennett: Will you offer the document in evidence, or are you?

Mr. Haycraft: I offer it in evidence as Commis-
2796 sion's exhibit.

Examiner Bennett: It will be received in evidence as Commission's exhibit next number if it is properly identified.

Mr. Weisman: I respectfully state this to the Court: I object to this unseemly interruption of my cross-examination by counsel for the Commission not only now but at all times that it suits himself, and now, since it has continued throughout

my cross-examination of the witness, it has gone to the point where he insists on offering documents in evidence which are not properly offered in evidence at this time.

Specifically referring to this document, I object to this paper going into evidence because no proper foundation has been laid for the introduction of this document in evidence. I submit that the mere fact that this witness offered me this document is certainly without any proper foundation as a basis for marking it in evidence.

The only thing that the witness has done is simply hand this paper to me, he made me a present of the 2798
paper, and I have been looking at it, and it has given me some ideas as the basis for questions which I have propounded to the witness. Surely I do not see under any possible combination of circumstances how this document could be said to be properly offered in evidence.

Examiner Bennett: Mark it for identification.

Mr. Weisman: Before that document comes into the custody of the Court I want to make this statement: In the first place, I am making a copy of it for my own use.

Examiner Bennett: Mr. Weisman, you will suspend the cross-examination until the Commission's attorney qualifies this document. No further com- 2799
ment by way of interrogation to this witness will be permitted until counsel for the Commission has had an opportunity to qualify the document, if he can.

Mr. Weisman: I object to this.

Examiner Bennett: Hand over the paper now to the reporter so he may mark it for identification.

Mr. Weisman: Wait a minute. We are making a copy of it.

Examiner Bennett: No, give the paper to the reporter, Mr. Weisman, now.

Mr. Weisman: May I make a statement to the Court?

Examiner Bennett: You cannot. You cannot do anything or say anything until you give this document to the reporter so it may be marked for identification.

Mr. Weisman: I do not think that I should deliver up this paper from my custody which has been turned over to me by the witness for the purposes of Commission's counsel at this time. It does not

2801 seem to me that it is proper to do so.

Examiner Bennett: You cannot make any statement until you have given that document to the reporter. You are instructed to give it to the reporter so that he may mark it for identification.

Mr. Weisman: He is obstructing my cross-examination. I object to Mr. Haycraft making an offer at this time, in the middle of my cross-examination, simply and solely and wholly for the purpose of obstructing, interrupting and disturbing my cross-examination of this witness.

Examiner Bennett: Mr. Weisman, I insist that you hand this document to the reporter so that he may mark it for identification at this time.

2802 Mr. Weisman: I now hand the document to the reporter. I will hand it to your Honor, I believe.

(Letter from Arthur W. Wright, merchandise manager, Wm. Filenes Sons Company, Boston, Mass., under date of March 9, 1936, was marked for identification Commission's Exhibit 358.)

Mr. Weisman: I am turning this paper over to you personally as a personal mark of my respect for your Honor. I do say, and I want this to appear on

the record, however, that your Honor has no authority or warrant in law or in equity to compel me to turn that paper over to the Examiner, a paper which has been handed to me by the witness. Such an action on the part of the witness is no ground or foundation for counsel for the Commission interrupting my examination and offering the document in evidence.

Examiner Bennett: I am instructing the witness now not to give you any further papers. We will avoid any matter of this kind in the future thereby.

Mr. Feldman: I think this is an inquisition and not a trial. 2804

Examiner Bennett: If you are going to continue to obstruct our procedure by conduct of that sort, Mr. Weisman, I shall instruct the witness not to give you any further papers and I shall see to it that further actions of that kind are stopped promptly. There is no necessity for such conduct and I assure you it will not be permitted in the future.

Mr. Weisman: I now want to object and I want to object very seriously and as strenuously as I may. I think that such action on the part of the Examiner and upon the part of counsel for the Commission is entirely unwarranted and constitutes a substantial damage to the essential rights of the respondents herein and something which, if continued, will defeat even the shadow of justice, to say nothing of the substance. 2805

Examiner Bennett: That will be all. You will defer any further questions on cross-examination until counsel for the Commission has had an opportunity to qualify this document for introduction, if he can.

By Mr. Hayeraft.

Q. Mr. Seegal, I hand you Commission's Exhibit No. 358 for Identification and ask you what it is? This is the paper which you handed to counsel a few moments ago. A. The paper which I handed to counsel contains a list of names of people, manufacturers, who owed us merchandise at the time we were red carded.

They told us in most cases that they would not deliver us merchandise because they were ordered not to deliver it to us by the Fashion Originators Guild of America, Inc., through a regular system of blacklisting. And——

2807 Mr. Weisman (interposing): I object to this. I want to serve warning on the Examiner that this is the most un-American type of trial I have ever seen.

I object to this Star Chamber proceeding. There is not a single word that this witness has said that is of his own knowledge after he identified this paper in the first few words. I submit that this is just an effort to conduct a Star Chamber proceeding by the overriding efforts of this gentleman.

I am in the midst of my cross-examination and we are now having a stump speech by this gentleman concerning something that he does not know about. He is asked, "What is this paper?" It is perfectly obvious that any honest person—and now

2808 I am attacking his integrity—he has common intelligence and I insist that any person who was honest would say in answer to that question that he knows that this paper is a certain list of manufacturers who had orders outstanding from his firm at that time, and not make a long speech about what somebody told somebody in connection with somebody else's statement. I may say here that we apparently may accept this as a fair illustration of what

may be indicated to your Honor and to the Commission as the type of testimony and the type of witnesses that are being offered in the proceeding and I want to spread it wide and large on the record so that your Honor and the Commission will know what we have got to meet in this proceedings. This is a letter containing that list I just referred to and that is all there is to it, and any honest person who is testifying under oath and who understands the English language can state what it means, and that is all. I do not believe any honest person would try to interpret and characterize this document and go even far beyond it as this witness has 2810
done. I repeat that I do not believe any honest person would try to do what this person is now trying to do, go into a lot of hearsay and ideas and conclusions and statements of that character. Therefore I move to strike from the record all of the words stated by this witness in answer to this question beyond the words "The paper which I handed counsel contained a list of the names of people, manufacturers, who owed us merchandise at the time that we were red carded."

Mr. Haycraft: I move that the last statement made by counsel be stricken from the record as quite improper and not a fair statement of the facts in the case.

Examiner Bennett: Granted. 2811

Mr. Weisman: Exception. I move that everything be stricken after the words "The paper which I handed counsel contained a list of the names of people, manufacturers, who owed us merchandise at the time that we were red carded."

Examiner Bennett: Read the entire answer of the witness.

(The reporter read the answer of the witness, as follows: "A. The paper which I handed to counsel contains a list of names of people, manufacturers who owed us merchandise at the time we were re-carded.

"They told us in most cases that they would not deliver us merchandise because they were ordered not to deliver it to us by the Fashion Originators Guild of America, Inc., through a regular system of blacklisting. And——")

Mr. Weisman: I move that everything after that be stricken out.

2813 Examiner Bennett: Everything may be stricken out from that point on.

Mr. Haycraft: Mr. Examiner, may I ask another question?

Examiner Bennett: For what purpose?

Mr. Weisman: I object. It is not necessary, your Honor. That has been admitted in evidence.

Mr. Haycraft: No, it has not.

Examiner Bennett: It has been marked for identification.

Mr. Haycraft: It is necessary before we admit it in evidence that it be properly identified. I have not made any attempt yet to offer it in evidence, but merely had it marked for identification.

2814 Mr. Weisman: I object to any such thing of this kind. Let us go on with this proceedings. We will never get through if we have delays of this sort.

Examiner Bennett: Do you want to ask a further identification question?

Mr. Haycraft: I do.

Examiner Bennett: You may proceed.

2815

By Mr. Haycraft.

Q. Did you correspond with any of the concerns named on the list which is now marked Commission's Exhibit No. 358 for Identification?

Examiner Bennett: What is that?

Mr. Weisman: I object. That is not a proper foundation question.

Examiner Bennett: Well, I think I will sustain the objection.

Mr. Haycraft: There is a further identification which is necessary, or which at least I think is necessary, in order to have its admissibility established.

2816

Mr. Weisman: I do not think that will make it admissible. How can anything make a document admissible which in its beginning was simply handed to counsel for the respondent by the witness? Certainly it would have to come in on redirect examination in any event.

Mr. Haycraft: I do not think so.

Examiner Bennett: You may proceed.

By Mr. Haycraft.

Q. There is a statement at the top of the page in typewriting. I will ask you if that was placed on there by you?

2817

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant for any purpose whatsoever and it is simply delaying this case further.

Examiner Bennett: You are referring to the words on the top of this letter which states, "This letter sent to the following manufacturers"?

Mr. Haycraft: Yes, sir.

Examiner Bennett: Proceed.

By Mr. Haycraft.

Q. Does that statement which the Examiner read refe to the written matter on the exhibit?

Mr. Weisman: I object to that as incompetent immaterial and irrelevant and obviously improper in form.

Examiner Bennett: Overruled.

Mr. Weisman: Exception, and I ask an exception to the adverse rulings just made to my objections Mr. Examiner.

Examiner Bennett: Granted. Proceed.

2819 Mr. Weisman: I also object to this entire line of testimony on the grounds previously stated in connection with my motion and otherwise.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

The Witness: The answer is "Yes."

Mr. Haycraft: I offer the exhibit in evidence.

Mr. Weisman: I object on the grounds previously stated.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

Examiner Bennett: The document will be received in evidence.

(The letter referred to, heretofore marked Commission's Exhibit 358 for Identification was received 2820 in evidence.)

Examiner Bennett: I want to add—no, I think I will let the record stand as it is.

By Mr. Weisman.

Q. Referring to Commission's Exhibit No. 358, I notice these words on this exhibit, "At the hearing this morning on our application for a temporary injunction under the

bill of complaint filed by us against the Fashion Originators Guild of America, Inc., et al. it was stipulated by the attorney for the Fashion Originators Guild of America, Inc., that members of the Guild are permitted to fill all of our orders now outstanding with such member without being subjected to Guild discipline and that the Guild would instruct its members to fill all such outstanding orders as quickly as it is humanly possible. Will you kindly wire us when we may expect to receive delivery on our orders outstanding with you? Yours very truly, Wm. Filenes Sons Company. Arthur W. Wright, Merchandise Manager." That letter was sent to all of the names appearing hereon? A. Yes, sir. 2822

Q. Your attorney referred to a suit for a temporary injunction under a bill of complaint filed by you against the Fashion Originators Guild of America, Inc.? A. Yes, sir.

Q. I show you this paper and ask you whether or not this is a copy of the bill of complaint referred to in Commission's Exhibit No. 358? A. Yes, sir.

Mr. Weisman: I now offer this copy of the bill of complaint as being a part of this same transaction referred to. Just a moment. I will identify it a little further.

By Mr. Weisman.

Q. This is the bill of complaint referred to in Commission's Exhibit No. 358 (showing the witness the document referred to)? A. Yes, sir. 2823

Mr. Weisman: I now offer this in evidence as respondents' next exhibit.

Mr. Haycraft: I object to that as incompetent, immaterial and irrelevant. This is not the proper place in this record so far as that exhibit is concerned. It refers to the stipulation and that is all that is referred to so far as this list is concerned.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

Mr. Weisman: May I have this marked for identification and have an exception also?

Examiner Bennett: Yes. It may be marked for identification.

(Whereupon the bill of complaint referred to was marked Respondents' Exhibit 13 for Identification.)

By Mr. Weisman.

2825 Q. Instead of going continuously along, I will try to save some time if I can in this manner. I have got to show him the other document in connection with that statement, but we will turn to the names that appear on here now while they are looking up the answer to it. Therefore, I will ask you in regard to Adler & Adler. Do you know what price merchandise they manufacture and sell? A. I know they make high-priced sportswear.

Q. What would you say would be a fair time of delivery for merchandise made by Adler & Adler? A. About four or five or six weeks.

Q. The next one is Milton Altmark? A. High-priced.

Q. The next one is Bernard Appel. A. Yes.

Q. Also high-priced? A. No, sir.

Q. How high is the price of their goods? A. Medium

2826 and low.

Q. William Bass. A. High-priced.

Q. Sydney Cann? A. Same.

Q. Casino Dress? A. Low and medium.

Q. Cecile Dance Frocks? A. Medium.

Q. Ciro? A. I do not know.

Q. Clifford Salkin? A. I do not know.

Q. If I told you they were high-priced, that I personally know they are and I represent them, will you adopt that?

A. If you tell me that I will take it, yes, subject to correction.

Q. Cohen-Tunick? A. Yes, they are high-priced.

Q. Del Monte Hickey? A. Well, very high-priced.

Q. Dolces? A. High.

Q. Dresden Dress? A. Medium—Dresden, did you say?

Q. Dresden. A. Medium, medium low and medium.

Q. Fashion Wear? A. I do not know.

Q. Harry Frank? A. Low, medium, if it is the Frank I am thinking of.

Q. Well, it is not. A. Then, it is high.

Q. This Harry Frank is rather fair with ruddy cheeks, and rather thick set. A. High. 2828

Q. Friedman Dress? A. Medium.

Q. Harry Gans, that ought to be Henry Gans. A. What is that?

Q. Harry Gans it says here, but it should be Henry Gans. I know him. A. I do not know.

Q. Goldstein Entin? A. Medium and medium-high.

Q. A Goodman? A. High.

Q. David Goodstein? A. High.

Q. Joe Greenberg-Bettina? A. Medium and high, and medium-high.

Q. Grossman Greenberg? A. Medium-high.

Q. Grossman Speigel? A. Medium.

Q. I have taken about 50 per cent. of them. I do not want to go all the way through if that will give you a fair cross section; does it, of all the type of manufacturers therein referred to? A. Yes. 2829

Q. I have not picked them out. I have taken them alphabetically as you have listed them. A. Yes.

Q. With that refreshment of your recollection would you say that three weeks was a fairly good time within which for these people to deliver their merchandise? A. Generally speaking the names that you have asked me, for that fair cross section, I would say three weeks would

be about the right time, unless they had something made up which happens once in awhile. They do have something made up and when they do we get it right away. That does happen.

Q. Do you not know that these people do not make up goods for stock, would only make up goods on order? A. In most cases we do not find they have the merchandise in stock. It does happen occasionally.

Q. Do you not know that these people do not make up any merchandise for stock? A. In most cases they do not; that is true; but in some cases they do.

Q. When that is the case, those are job lots? A. Yes,
2831 sir.

Q. Were these names that I have read to you right down the list without exception until we got finished with half of them; just look at them. Did I skip a single one all the way down? Did I not take them all along? A. I believe you took them as listed. If you say you did I will take that.

Q. Every single one. The first half of those just as they are arranged alphabetically, are they arranged alphabetically? A. Yes, sir; they are arranged alphabetically.

Q. There is no arrangement for any particular purpose other than listing them alphabetically? A. That is correct.

Q. Do you think the names I have already given you would, without taking up the time, and in order to shorten the proceeding, is that a fair cross section of the entire
2832 group? A. As I look over the second half, I recognize the names of some manufacturers who make lower-priced merchandise on the average.

Q. Let us go down the whole list to be sure because I think we can shorten it by taking the half really, but I will go through the whole list. I did not even look down at the balance of them. Do you know the firm of Grossman & Greenberg? A. Yes.

Q. Do you know they are a high-priced firm? Do you know Grossman Speigel? A. I have answered that, I believe, before.

Q. No, no. A. I am sorry.

Q. Are they not high-priced? A. Yes.

Q. High-priced? A. Well, come to think of it, not so high-priced.

Q. Where would you put them? A. Medium high.

Q. Max Heit. A. Yes, medium to medium high.

Q. International Dress. A. Low.

Q. Low? A. Low and very high.

Q. Yes. E. A. Jackson Bienard. A. I do not know them. 2834

Q. I do. Will you take my word that they are high, very high? Do you know Mr. Jackson, M. A. Jackson, that has been in the business for so many years? A. I do not know—yes, I think I do recall the name.

Q. Well, that is the one in this firm. A. I recall now.

Q. And also Madam Bienard. A. I recall her.

Q. Also Henry Green. A. I guess that statement is right.

Q. I want to show you that I know them pretty well and just what character of firm it is. A. I see.

Q. Joanne, Jr. A. Medium and low medium.

Q. Junior Town Frocks. A. Medium and low, I believe.

Q. Mary Lee. A. Medium.

Q. Lyla Modes—first, let us go back to Mary Lee. Are they not medium high? A. Medium high. 2835

Mr. Weisman: Off the record.

(There was a discussion off the record.)

By Mr. Weisman.

Q. Now, Lyla Modes. A. Medium.

Q. Lipman Brothers. A. Low.

Q. Marie Lynn; that is not Shilow, but Marie. A. Medium.

Q. I think it is a fair statement. E. N. Marcus & Company? A. Medium and low.

Q. Monte Sano & Pruzan—first, let us take Matthews Kadetsky. A. Which one?

Q. Matthews Kadetsky. A. Medium high.

Q. Now, Monte Sano & Pruzan. A. I do not know.

Q. High. A. I would not be sure.

Q. Do you know Monte Sano? A. No.

Q. Do you know Charles W. Nudelman? A. Which one is that?

Q. The next one. Charles W. Nudelman. A. Yes. Medium high.

2837 Q. Pedes Gilbert. A. Medium.

Q. Robinson Brothers. A. Medium and low.

Q. Medium and low? A. Well, medium.

Q. And Radiant Dress? A. Medium and low.

Q. Now, let me see. I am not sure that I got these in here, and I want to get them all in. Charles W. Nudelman. A. Medium high.

Q. Pedes Gilbert. A. Medium.

Q. Radiant Dress. A. Medium and low.

Q. Robinson Brothers. A. Medium.

Q. Rose Barrack & Lahm. A. Medium.

Q. Would your believe they are not high? A. If you know the price range better than I do, I have no doubt if you say they are high that they are high.

2838 Q. Sheila Lynn, Inc. A. Medium high.

Q. Somay. A. Medium and low.

Q. Star Maid. A. Medium and low.

Q. Strauss Miller. A. I do not know.

Q. Mrs. Strauss is Mrs. Strechner's sister. A. Then they must be high.

Q. Virginia Hume & Gold. A. I do not know.

Q. Zuckerman Krauss. A. Medium and medium high.

Q. Capri Frocks? A. High and medium.

Q. Taking all of these as read, and with the refreshment of your recollection, do you believe that by and large the delivery by all of these people of their merchandise within three weeks is a fair and reasonable statement as the fair and reasonable time within which delivery should have been made? I mean, taking out the very high, which would be longer? A. I should say from two to three weeks, that would be a little nearer, two weeks is low and three weeks I would think would be a little high. It would be in between.

Q. Two and a half weeks to three and a half weeks? A. Well, I would accept it at two and a half weeks.

Q. You get your delivery in three weeks, do you? A. 2840
We usually get it in about two and a half.

Q. On this occasion you got your delivery in three weeks, did you? A. I do not recall now. I may have some records in the office that would give the information. I think we did get it in about that length of time.

Q. Yes. A. I do know there were many deliveries that were delayed because they just stopped work on our order, naturally when we were red carded and the merchandise came into our store finally and had no longer the value or, certainly, it did not have the same value because its value was greatly depreciated because it was too late, and we needed a week at that time very much over getting the goods the next week. In other words, a week at that time was very important because this was just before Easter, 2841
and a week there is tremendously important. Merchandise coming in one week later than it should have may have made the difference between a profit and a loss.

Q. With regard to the statement set forth in Respondents' Exhibit 13 for Identification, the same being a copy of the complaint referred to in Commission's Exhibit No. 358, I show you this paper and ask you whether or not this was the Fashion Originators Guild of America, Inc., answer filed in that case? A. Without reading all of the details, I would say yes.

Q. You did see it, did you not? A. It has a great resemblance at the beginning. If you say so I would take it.

Q. You have seen it? A. Oh, yes, I have read it thoroughly.

Mr. Weisman: I now ask that this be marked Respondents' Exhibit 14 for Identification.

(The answer of the Fashion Originators Guild of America, Inc., to the suit brought by Wm. Filene's Sons Company in the District Court of the United States for the District of Massachusetts, was marked Respondents' Exhibit 14 for Identification.)

2843

By Mr. Weisman.

Q. Now, this Respondents' Exhibit 13 for Identification and Respondents' Exhibit 14 for Identification together constitute the papers in the action referred to in Commission's Exhibit 358, do they not? A. What is the question again, please?

(Question read.)

A. I believe so.

Q. With regard to Respondents' Exhibit 13 for Identification, when you were, as you say, "red carded," and you felt an injury was being done to you, you thereupon consulted with counsel, I take it?

2844

Mr. Haycraft: That is objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

By Mr. Weisman.

Q. As a result of—I withdraw that. Because of your action, or because of such action as was taken by the

Fashion Originators Guild, I have reference to this "red carding" of Filenes as you have denominated it, Filenes did commence an action in the District Court of the United States for the District of Massachusetts, did they?

Mr. Haycraft: Same objection.
Examiner Bennett: Sustained.
Mr. Weisman: Exception.

By Mr. Weisman.

Q. Such action as they commenced to bring—I withdraw that—no, I will not—and such action as they—I withdraw that. When Filenes was, you have stated, red carded, they did take legal action against the Fashion Originators Guild of America, Inc., did they not? 2846

Mr. Haycraft: Same objection.
Examiner Bennett: Sustained.
Mr. Weisman: Exception.

By Mr. Weisman.

Q. Such action as they did take was evidenced by the suit as is set forth in this bill of complaint, Respondents' Exhibit 13 for Identification?

Mr. Haycraft: Same objection.
Examiner Bennett: Sustained.
Mr. Weisman: Exception.

2847

By Mr. Weisman.

Q. Well——

Mr. Weisman: One moment. I now offer in evidence Respondents' Exhibit 13 for Identification and Respondents' Exhibit 14 for Identification, respectively, which have been respectively so marked in accordance with the practice of the Commission for identification.

Mr. Haycraft: The same objection as heretofore urged to Commission's Exhibit 13 for Identification —I beg your pardon—Respondents' Exhibit 13 for Identification is alleged as to Respondents' Exhibit 14 for Identification.

Examiner Bennett: Sustained as to both.

Mr. Weisman: Exception as to both.

By Mr. Weisman.

Q. I show you this paper and ask you to look at it and state whether or not this is a copy of the opinion rendered by the Court on the application for a temporary injunc-
2849 tion referred to in Commission's Exhibit No. 358, being Respondents' Exhibit 15 for Identification.

Mr. Haycraft: Same objection.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

I take it your Honor will take judicial notice of this inasmuch as this is an opinion and is a court record.

Examiner Bennett: That is understood. This is a copy of Court's opinion, and we will take judicial notice of that under the Commission's rules. We will take judicial notice of it as far as that is concerned.

Mr. Weisman: I believe this has already been
2850 marked Respondents' Exhibit 15 for Identification.

Since your Honor takes judicial notice under the code of the United States Court of all opinions and papers in the case, I also call your Honor's attention to the fact that Respondents' Exhibit 13 for Identification and Respondents' Exhibit 14 for Identification are file papers in this action therein referred to, namely, William Filenes Sons Com-

pany against Fashion Originators Guild of America, Inc., In Equity No. 4293, in the United States District Court for this District.

I believe under the Revised Statutes this Court is likewise required to take judicial notice of all of these papers.

Examiner Bennett: I presume so, as information. You are through with your offer?

Mr. Weisman: Yes.

Examiner Bennett: There is a motion pending for the striking of the offer of proof, and the motion is granted for the reason the Examiner has been over that opinion and has considered it in connection with this case. 2852

The issues of law are totally different, under different proceedings, brought under a different statute.

The case that was before the Court was decided upon a technicality that has nothing to do with the merits of the case.

The opinion is devoted to dicta upon the merits of the case, and even as an opinion is unworthy of any attention; and the evidence, of course, would not be evidence in this proceeding because there were not the same parties of the same issues.

Mr. Weisman: I respectfully except to your Honor's ruling and respectfully call your Honor's attention to the very fact that even though we are— 2853 in other words, even though we were to grant what your Honor states, and yet in my position as attorney for the respondent I certainly do not grant it. It is both proper and advisable that the Federal Trade Commission and the United States Circuit Court of Appeals, which must ultimately confirm any orders that may be issued here, may have the

pleadings before their court as they shall have to pass upon the matters of law that your Honor has now ruled upon.

In other words, I take it that your Honor in this last ruling has made a ruling which is really a ruling of law and of fact.

Examiner Bennett: Yes, a ruling of law and of fact. You are offering certain things as evidence, and I am saying that they are irrelevant.

Mr. Weisman: I believe that the matter should be before the Court and a part of the record so that your Honor's ruling may be examined with regard

2855 to the underlying facts. Therefore, I except to your Honor's ruling in its entirety and separately as to the individual statements therein contained.

I will also say at this time, and I would beg of your Honor to permit my associate, Mr. Feldman, to make a statement with regard to our position and contention with regard to this phase of this matter. I have asked to present a very brief statement in that regard. It will only take one or two minutes.

Examiner Bennett: I will ask him to make that on your direct case.

Mr. Weisman: I take it that your Honor refuses him that permission?

2856 Examiner Bennett: I must decline. I have passed upon that. I decline to receive it now because it is something which has now been passed upon and no good purpose would be served by further discussing it.

You have an exception and that is all that is necessary to protect your rights.

Mr. Weisman: May we have an adjournment until 2.15? It is now 12.45 o'clock P. M. and I should like to have at least an hour for luncheon, if I might.

Examiner Bennett: No. We have to get along. We will have an adjournment until 2 o'clock, gentlemen.

Please be here promptly so that we may go ahead without any delay.

(Whereupon, at 12.45 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION—2 P. M.

2858

Examiner Bennett: Before you resume, Mr. Weisman, the Examiner would like to make a very short statement.

It has been called to his attention that probably the language was broader than he intended in his statement about the opinion of Judge Brewster in this litigation, which was brought into the case to-day.

I stated in the beginning that I was considering it for the purpose of this case, and I want that distinctly understood. I was not making a general statement as to the merits or demerits of the opinion for any other purpose except for the purpose of this case.

You may proceed.

Mr. Weisman: Thank you.

2859

S. M. SEEGAL resumed the stand and testified further as follows:

Cross-examination (resumed) by Mr. Weisman.

Q. Mr. Seegal, your store had been a co-operating retailer for about three years prior to—I guess it was about two years prior to, or about two and a half years prior to March, or the latter part of February, 1936? A. Yes, sir.

Q. During the time that you have been a co-operating retailer, you knew, did you not, from personal experience of your own store, that it was the policy of the Guild manufacturers not to sell their merchandise to those people who had indicated that they were not in sympathy with the Guild's efforts to curb design piracy; is that not so? A. Yes, sir.

Q. What? A. Yes, sir.

Q. Now, by the letter that Mr. Riley sent, it was there by intended to serve notice on the Guild, was it not, that it was not your policy to co-operate any further with the purposes of the Guild as you understood them to be?

2861 Mr. Haycraft: I object to the question, Mr. Examiner. The exhibit will speak for itself.

Mr. Weisman: Well, I can ask his intention in causing the exhibit to be sent.

Mr. Haycraft: He did not cause the exhibit to be sent.

Mr. Weisman: He testified he did.

Examiner Bennett: Well, I will let him answer.

The Witness: Will you read the question?

(Last question read.)

A. Mr. Riley's letter was notification that we——

By Mr. Weisman.

2862 Q. No, look, please, what I want— A. Well——

Q. We are all desirous of shortening this matter. Now, that is a simple question. A. Now, it is a simple question but it is possible you are getting—if I answer that "yes" or "no" I would not get it over to this Court.

Q. Well, let us see— A. The very important point.

Q. Well, let us see what part of that question you think you cannot answer "yes" or "no"; we will have it read again, possibly.

(Question again read.)

A. It was the late activities of the Guild that we objected to.

Q. That is right, that is why I said as you then understood, as you understood them to be. A. It was more than purposes; it was activities.

Q. Well, purposes and activities. A. Yes, sir.

Q. Now, when you sent that letter, you believed, did you not, that if the Guild members were in earnest in their policy that they would, as the result of your notification to them, cease to be willing to do business with you, did you not? A. We believed that the Guild might change some of their activities as a result of Mr. Riley's letter and perhaps have a peaceful solution to the problem. 2864

Q. In other words, you felt that if the whole eighteen stores at one time indicated that they were not going to support the Guild that the manufacturers might change their ideas? A. Might reconsider their most recent activities.

Q. Yes, and you came to this conclusion because of what you believed was the weight of your concerted action? A. The weight, not in terms of power, but in terms of opinion of certain retailers.

Q. Concerted action by it?

Mr. Haycraft: Objected to.

Examiner Bennett: Read the question.

(Last question read.)

Examiner Bennett: I will let him answer. 2865

A. We felt that the group of retailers in presenting an opinion like this would receive careful consideration by the Fashion Originators Guild.

By Mr. Weisman.

Q. Yes. A. Not from the angle of threat——

Q. Now, you don't know, do you, that it did not receive careful consideration? "Yes" or "no."

Mr. Haycraft: Objected to.

By Mr. Weisman.

Q. Do you know whether it received careful consideration or not?

Mr. Haycraft: That is objected to as irrelevant and immaterial to the issues in this case.

Mr. Weisman: All right.

Mr. Haycraft: Whether it received careful con-
2867 sideration or otherwise.

Mr. Weisman: Well, we will withdraw the question. I don't want to prolong. I am going to stick to my promise to try to——

By Mr. Weisman.

Q. Now, after you had made plain your intentions with regard to the policy of the Guild by the letter of Mr. Riley, you learned that you were red carded? A. Yes, sir.

Q. That meant that, when we say "red carded," that the Guild members had been notified by means of a card sent to them, which was red in color, that you had indicated your unwillingness to further co-operate with the Guild in its policy and activities as they then were; is
2868 that not so? A. Yes, sir.

Q. Now, when you received that notification, or when you learned of this decision, you did not believe that the manufacturers were in earnest in their determination, did you?

Mr. Haycraft: Objected to as irrelevant and immaterial.

Mr. Weisman: You brought it out on your own direct examination.

Mr. Haycraft: No, I did not.

Mr. Weisman: Yes, you did. Now, look, Everett, on your direct examination this witness testified that he sends his buyers around. I am reading from the record—to find out if they, the manufacturers, were in earnest. Now, that was on direct examination. I do not want to take up so much time arguing, Judge.

Examiner Bennett: Read the question.

(Last question read.)

Examiner Bennett: Well, I will sustain the objection to that; I do not think it is helping us any. 2870

Mr. Weisman: Exception.

Examiner Bennett: Yes.

By Mr. Weisman.

Q. Notwithstanding—you subsequently found, did you not, that the manufacturers were in earnest in their determination not to do business with you because of your declaration of unwillingness to co-operate with the Guild in its purposes and activities as they then were? A. I cannot answer that question "yes" or "no."

Q. Well, will you tell me, just as briefly as you can, what there is in that question that you cannot answer? A. I will try to make it brief. Your question states, I believe, that we found out that they did not want to do business with us because we had notified the Guild that we could not co-operate—— 2871

Q. Your point is, you do not know what is in their mind? A. No. My point is that I have reason to believe, in fact I know, positively know, that some manufacturers—

Q. (Interposing) Well, wait a moment. Maybe I can help you in this fashion——

Mr. Haycraft: Let him complete his answer.

Mr. Weisman: Wait a moment. He has indicated all that I mean, Everett. I am going to be very brief.

By Mr. Weisman.

Q. After you were red carded, as you have stated that you were, you want to tell me that some manufacturers would have liked to do business with you but as members of the Guild they could not do business with you; is that it? A. Because of fear of penalties——

Q. Yes. A. —and so forth, of——

Q. Surely. But these manufacturers who were willing
2873 to do business with you were members of the Guild? A. That is right.

Q. They were members of the Guild? A. Yes.

Q. And you mean, do you not, that these few manufacturers whom you say would have liked to do business with you felt that if at this particular time they could do business with you, without incurring violation of their pledge to the Guild, they would personally benefit thereby; is that not it? A. Yes, and that they wanted to——

Q. Yes, and these manufacturers, if they had done business with you, that would have virtually destroyed the Guild policy, would it not? A. Those manufacturers felt that that would have hurt them, because of penalties——

Q. (Interposing) No, I know that. A. Yes.

Q. Never mind as to that. A. Oh, you——
2874

Q. But I say that generally, if they had done business that would have been a virtual ending of the Guild in its policy; is that not so?

Mr. Haycraft: Don't answer.

Objected to—I object to that question.

Examiner Bennett: I will sustain the objection. I think that anybody can express an opinion on that as well as this witness.

Mr. Haycraft: Yes.

By Mr. Weisman.

Q. Well, did you or did you not, when you caused the letter of Mr. Riley to be sent to the Guild, expect to be red carded?

Mr. Haycraft: He has already answered that question, Mr. Examiner; I object to it.

Examiner Bennett: I will sustain the objection to that question.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. When the telegram was sent to you, which telegram followed the receipt by the Guild of the letter from Mr. Riley, and your store did not reply to that letter, did you not realize that the failure to reply to the letter might be construed by the Guild as an invitation to be red carded? A. It might. 2876

Q. Well, quite frankly, and as a business man, was not that the fair implication of the telegram?

Mr. Haycraft: Oh, that is objected to.

Mr. Weisman: Well, is it? I will reframe it.

By Mr. Weisman.

Q. Did not that telegram convey to you that that was its fair implication? A. Frankly, the chance looked more than 50 per cent. that we would be red carded, but not a hundred per cent. 2877

Q. I see. In other words, you felt that if you had this firm stand they might recede from their position?

Mr. Haycraft: I object to the form of the question.

Examiner Bennett: Well——

Mr. Haycraft: I think, Mr. Examiner, the witness has made it very plain——

Mr. Weisman: I cannot hear you.

Mr. Haycraft: —what the situation was.

Examiner Bennett: I think you are interpreting it—I think you will have to reframe your question.

Mr. Weisman: May I have the question?

(Question read.)

Mr. Weisman: Well, I will withdraw the question.

Examiner Bennett: All right.

Mr. Weisman: That is all.

Examiner Bennett: No redirect?

2878 Mr. Haycraft: A little redirect, yes.

Redirect examination by Mr. Haycraft.

Q. At the time that you received notice that you had been red carded, I believe you testified that there were some orders outstanding? A. Yes, sir.

Q. And I am not clear as to the length of time that those orders were outstanding at that time, and how long it was after that time before they were actually filled. Could you give us that detail? A. Yes.

Mr. Weisman: Well——

By Mr. Haycraft.

2880 Q. I do not think the record is clear on that point, there is some testimony as to two or three weeks of delay.

Mr. Weisman: If he personally knows. Now, this means, Judge, and I am calling your attention now so that you may use the same discretion towards my adversary that you used towards me—this means that we are going over now each and every one of these orders, in my examination on this redirect. I say this because it is obvious, I

believe, that this witness does not know that as to each order, it is just one of these questions, and I think it adds nothing to this case, and I believe that he is merely unnecessarily prolonging it.

Now, if your Honor does not agree with that, I will then have to go into the twenty-odd manufacturers in detail, and if we take five minutes for each manufacturer we have a hundred minutes, or approximately two hours and forty minutes.

Mr. Haycraft: That is all right, we can stay here a week if that is necessary.

Mr. Weisman: All right. I just want that on the record. 2882

Examiner Bennett: I beg your pardon?

Mr. Weisman: He says that we can stay here a week. Now you cannot blow hot and cold. When I am examining we are in a hurry; when he is examining we can stay here a week.

Mr. Haycraft: No, I never hurried you in your examination.

Examiner Bennett: All right.

Mr. Weisman: I further object to this improper redirect examination. It was all brought out on direct examination. On his direct examination he asked him about these orders and what happened. The witness says there was a stipulation. And then after three weeks' interval they got the merchandise in. Now, we are going over it in detail again. 2883

Mr. Haycraft: I did not say that.

Mr. Weisman: Well, if that is to be the procedure that this case is to be governed by, I think what is sauce for the goose is sauce for the gander, and we should have the same privilege. I respectfully object to this line of testimony.

Examiner Bennett: I will entertain—if the examining attorney presses it, I am going to entertain his question and when it comes to recross-examination I will decide on that, how far it goes.

I would suggest that the only useful thing is to get the date of that stipulation, and, if he remembers the time thereafter when the goods were delivered, if that is what you are trying to fix.

Mr. Haycraft: That is what I am trying to fix, Mr. Examiner.

Mr. Weisman: Well, the date of the stipulation is now in evidence. We don't have to fix that.

2885

Examiner Bennett: It is in evidence, is it?

Mr. Weisman: Yes, your Honor, it is on that last exhibit, Commission's Exhibit 358, if my memory serves me correctly.

Examiner Bennett: Yes, that is in evidence.

Mr. Weisman: Yes.

Mr. Haycraft: What is the date?

Mr. Weisman: It is your exhibit; I have not got it.

Examiner Bennett: See if that is true.

Mr. Weisman: Where is Commission's Exhibit No. 358?

Mr. Martin: Here it is. It is dated March 9.

Mr. Weisman: Yes, your Honor, it is dated March 9.

2886

Examiner Bennett: March 9, 1936?

Mr. Weisman: 1936.

Examiner Bennett: Well, if you want to ask one question as to whether that came in due course after that, or——

Mr. Haycraft: I am trying to find out when it was that he received the red card—when was it he received notice he had been red carded.

The Witness: You are asking me?

By Mr. Haycraft.

Q. Yes. A. About the 15th of February, I believe.

Mr. Weisman: Do you know?

The Witness: I can examine my records.

Examiner Bennett: Long after the red card.

Mr. Weisman: I submit this certainly is not redirect. We got all of this on direct examination.

The Witness: You have got it.

Mr. Weisman: We are starting to try the case all over again, Judge.

Examiner Bennett: If that is in the record I will sustain the objection to it, if it is in the record sufficiently, it is there. 2888

By Mr. Haycraft.

Q. What is the date of the Riley letter? A. The Riley letter is dated February 15; we were red carded February 17.

Examiner Bennett: I say, if that is in the record already——

Mr. Haycraft: No, it is not stated in the record. That is the reason I want it here.

Examiner Bennett: That is my recollection.

Mr. Haycraft: We did not have the exact date before.

Examiner Bennett: I beg your pardon? 2889

Mr. Haycraft: We did not have the exact date before. The Riley letter is dated the 14th, I believe.

The Witness: 17—15th is the date.

Examiner Bennett: Well, if we did not have the date before, you may state the date.

The Witness: Riley's letter was—telegram from Post was on February 15, in reply to Riley's letter

of February 14. We were red carded as of February 17.

Mr. Haycraft: All right.

Examiner Bennett: Yes.

Mr. Post: Anybody got a calendar?

Mr. Haycraft: Yes, I have one (handing calendar to Mr. Weisman).

Mr. Weisman: Off the record.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Mr. Weisman: I understood your Honor to say that if we got the date, March 9, the date of the

2891 stipulation, that you would limit the query as to how soon after the stipulation——

Mr. Haycraft: No.

Examiner Bennett: Yes. Well, I understood that these dates are all in the record. I find that they are not in the record. They are obviously dates of some importance, and we are going to have them. Now, as to your question as to the date of the red carding——

By Mr. Haycraft.

Q. First, I will ask when it was that Filenes were red carded, so far as you know? A. February 19.

Examiner Bennett: 1936?

2892 Mr. Haycraft: 1936.

The Witness: Yes.

By Mr. Haycraft.

Q. Now, from February 19 to March 9 had you received any goods from the Guild manufacturers with whom you had outstanding orders? A. No, sir.

Q. Now, referring to Commission's Exhibit 358, I will ask you how long after March 9, the date of the letter, you

received the goods which were on order? A. Within twenty-four hours after March 9 we started to receive shipments of merchandise, which continued up until the middle of the month, and I believe some after the 15th of March.

Q. Now, were the orders which were outstanding on February 19 orders which had been placed individually before February 19, or some time before? A. Some were placed some time before, substantially before; some very recently before the 19th.

Q. Now, you were questioned on cross-examination with respect to a comparison of your sales figures of the three dress departments referred to in your direct testimony, 2894
affected by the red carding on the part of the Guild. You had made a comparison between February, 1936, and February, 1935, and, as I recall it, the February, 1936, sales figures were higher than February, 1935? A. Yes, sir.

By Mr. Haycraft.

Q. You are familiar with the comparison of the figures that were presented yesterday?

Mr. Weisman: Objected to.

A. Yes, sir.

Mr. Weisman: Objected to as incompetent, immaterial and irrelevant. 2895

Examiner Bennett: It is a foundation question; overruled.

Mr. Weisman: Exception.

A. Yes, sir.

By Mr. Haycraft.

Q. Do you have them before you now? A. Yes, sir.

Q. I will ask you whether or not you, in your experi-

ence, and your familiarity with the business of those departments, are in a position to testify as to whether there was any peculiar situation that existed that caused the figures in February, 1936, to be substantially higher than the figures of February, 1935?

Mr. Weisman: Objected to as incompetent—

A. Yes.

Mr. Weisman: Wait a moment.

Examiner Bennett: Well, I consider that still a foundation question; overruled.

2897 Mr. Weisman: Exception.

A. Yes, sir.

By Mr. Haycraft.

Q. Then, in the light of that experience, I will ask you to testify as to the cause for the excess in 1936 over 1935?

Mr. Weisman: Objected to as incompetent, irrelevant and immaterial; no proper foundation is yet laid, your Honor.

Examiner Bennett: Read the question.

Mr. Weisman: What excess? That is no excess.

Examiner Bennett: I will ask him to state first just what that condition was that he speaks of.

2898 The Witness: Me?

Examiner Bennett: Yes, sir.

The Witness: Yes, sir. There was a much heralded garment strike which was supposed to begin on February 1. A great deal of notice had been given through trade journals, and so forth, and in order to prepare for this impending garment strike, Filenes bought very much more merchandise in January, for February delivery, than we normally

would. In one of the divisions alone of the business, in Mr. Drew's division, with approval of management, we bought $37,500 more just to take care of the strike. We also bought substantially in Mr. Gross' division and Mr. Zerkowsky's division. We therefore were well prepared for the February business in spite of being red carded in the middle of February.

As a matter of fact, the increase in business in the month of February was exactly the same in those dress departments, almost to a tenth of 1 per cent., as was the main store to which I have previously referred, and 3 per cent. better than the 2900
Federal Reserve——

Mr. Weisman: Just a moment. I ask that that answer be stricken out. It is not responsive to your Honor's question. It is argumentative, not a statement.

Examiner Bennett: Not a part of it, if you want that which is responsive to the question, then you may—I was intending my question as a foundation question—you can repeat—you can repeat the question, if you wish, Mr. Haycraft, and have him repeat his answer and I will strike out the portion relating to the condition of business—that is, the peculiar circumstances; that is, the circumstances of the strike.

2901

Mr. Haycraft: He answered both ways.

Examiner Bennett: And the preparation for the strike which had been heralded.

Mr. Haycraft: I will ask, then, that my question be repeated to the witness.

Mr. Weisman: You mean that the Judge's question be repeated.

Mr. Haycraft: No.

Examiner Bennett: No. The Judge's question has been answered. I have stricken out the portion relating to the condition of business.

If you will read the answer, I will indicate what is stricken.

(Question read as follows:

"Q. I will ask him to state first what that condition was that he speaks of. A. Yes, sir. There was a much heralded garment strike which was supposed to begin on February 1. A great deal of notice had been given through trade journals, and so forth, and in order to prepare for this impending

2903 garment strike, Filenes bought very much more merchandise in January, for February delivery, than we normally would. In one of the divisions alone of the business, in Mr. Drew's division, with approval of management, we bought $37,500 more just to take care of the strike. We also bought substantially in Mr. Gross' division and Mr. Zerkowswy's division. We therefore were well prepared for the February business in spite of being red carded in the middle of February.")

Examiner Bennett: The rest of the answer is stricken.

Now, you may repeat Mr. Haycraft's question.

(Question read as follows:

2904 "Q. Then, in the light of that experience, I will ask you to testify as to the cause for the excess in 1936 over 1935?")

Mr. Weisman: Has he already answered that?

Examiner Bennett: He has answered in that particular—no, he has related the peculiar circumstances which made him competent that he could answer.

Now, go ahead.

The Witness: You want me to repeat what I said before?

Examiner Bennett: Well——

The Witness: I would like to start in——

Mr. Weisman: Oh, I will stipulate that he will repeat the same thing that he said before.

The Witness: But I want to add—I was interrupted—I want to add some things to that. I had not finished my answer.

Examiner Bennett: Go ahead and answer the question.

The Witness: Would you repeat the stricken-out part. 2906

Mr. Weisman: Oh, I ask that it be not repeated.

The Witness: That is going to be my answer, plus some more.

Mr. Weisman: The reason it was stricken out was because it should not appear in the record. Now he says that you——

The Witness: I thought this was a new question.

Examiner Bennett: Because of your objection that it was not responsive——

Mr. Weisman: Yes.

Examiner Bennett: That is the only reason why I struck it.

Mr. Weisman: Yes.

Examiner Bennett: Now, you may read the question that was stricken out. 2907

(The continued answer was read as follows:

"As a matter of fact, the increase in business in the month of February was exactly the same in those dress departments, almost to a tenth of 1 per cent., as was the main store to which I have previously referred; and 3 per cent. better than the Federal Reserve——.")

The Witness: Now——

Mr. Weisman: Now, may I know what question is before the witness?

Examiner Bennett: I beg your pardon?

Mr. Weisman: May I know, now, what question is before the witness?

Examiner Bennett: The question was read to him by the reporter, which was Mr. Haycraft's question.

The Witness: That is my understanding.

Examiner Bennett: Read the question.

(Question again read as follows:

"Q. Then, in the light of that experience, I will
2909 ask you to testify as to the cause for the excess in 1936 over 1935?")

Examiner Bennett: Now, have you finished your answer?

The Witness: Part of my answer is the stricken out part and I would like to go on.

Examiner Bennett: Go on.

Mr. Weisman: No, I would like to have the answer to that question.

Examiner Bennett: You can read the answer as far as it has gone.

The Witness: I will take out the stricken out part.

Mr. Weisman: And before that, may I have my
2910 objection to that question? In that the question is improper in form and incompetent, in view of your Honor's own ruling. Your Honor ruled, as I understand, this was only subject of opinion evidence. The witness has not been asked for his opinion. He has been asked for the fact, which obviously this Court and any court can see cannot be given on a question like this. It is only a question of opinion, not a question of fact. Such matter is not susceptible of factual proof, and I object to the form of the question.

Examiner Bennett: I think probably that objection is well taken.

Mr. Weisman: What is that?

Examiner Bennett: I say, I think that probably your objection is well taken.

Mr. Weisman: Thank you.

Examiner Bennett: Put it in that form, Mr. Haycraft.

Mr. Haycraft: All right, I will amend my question and state that——

By Mr. Haycraft.

Q. State what, in your opinion? 2912

Examiner Bennett: Have you an opinion?

The Witness: About the February business?

By Mr. Haycraft.

Q. Yes.

Examiner Bennett: Yes.

By Mr. Haycraft.

Q. 1936 compared with 1935. A. I have.

Q. Will you state it? A. Business in February, 1936, compared to 1935, in those dress departments was good, but no better than the main store itself. It was better than our competitors, as shown by the Federal Reserve figures. The dress departments in question were ahead of last year 11.3 per cent. The upstairs store—— 2913

Mr. Weisman: No. May it please your Honor—

Examiner Bennett: That is part of the answer. Just be still, please.

Mr. Weisman: All right.

Examiner Bennett: You can make a motion to strike.

A. (Resumed) —the upstairs store was ahead 11.5 per cent. The Federal Reserve figures for February showed the town was ahead in dresses 9.9 per cent.

We had—this going ahead of competition in dresses was in accordance with what had been the custom for some months previous.

By Mr. Haycraft,

Q. Would you say that——

Mr. Weisman: Just a moment, just a moment; that is a question and an answer. Now, I move to strike out from the answer the latter part thereof.
2915 As I recall the question, he was asked to give his opinion as to why the February business in 1936 was better than the February business in 1935. Now, that only requires a statement of the reasons, and not a statement of a comparison of what other stores did, and so forth and so on, and I ask that the latter part of the answer be stricken out, and that the answer be confined to the question, to-wit, what was his opinion as to why this condition existed, and he answered that in the beginning by saying, "stocks and so forth, and so on, in anticipation of the strike." The latter part is not a part of his opinion.

Examiner Bennett: All right; overruled.

2916 Mr. Weisman: Exception.

Examiner Bennett: Your motion is denied.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. In your opinion, was the comparison of these three dress departments in February, 1936, as compared with 1935, a normal increase in business?

Mr. Weisman: Objected to as incompetent, irrelevant and immaterial. We are now going into all fields of speculation. That is objected to. Not proper. Additionally, it is not proper redirect.

Examiner Bennett: I will sustain the objection to that. I do not think we have to drag this out. We are going into all the economic factors.

By Mr. Haycraft.

Q. You were asked in cross-examination to compare the March sales. A. Yes, sir.

Q. For those three departments, for 1936, with 1935? A. Yes, sir. 2918

Q. I will ask you whether or not you have made a comparison of the three dress departments for that month in those two years with the total sales of the main store? A. I have.

Mr. Weisman: Objected to as incompetent, irrelevant and immaterial, no proper redirect.

Examiner Bennett: I think your question and the correctness of these conclusions as to that matter—I will let him give his statement on them.

Mr. Weisman: Exception.

A. Our business in the dress departments started to slump——

2919

Mr. Weisman: Now, I ask that that be stricken out.

Mr. Haycraft: Mr. Examiner, I would ask that the witness be allowed to complete his answer before he is interrupted.

Examiner Bennett: He may.

A. (Resumed) —started to slump in March very decidedly compared to the main store. In March the main

store had an increase of 10.8 per cent. The dress departments in question had an increase of 3.0 per cent.

By Mr. Haycraft.

Q. Now, I ask you to direct your attention to the first ten days of April. You were called upon in cross-examination to make a comparison of the first ten days of April, 1935, with April, 1936. First I will ask you whether or not the two periods are comparable, in your judgment? A. They are not.

Q. Why? A. This year, Easter came one week earlier than last year. Easter is a very important factor affecting
2921 our business, and particularly the garment business. The comparison, using April 10, gives you the first and second week before Easter this year, against the second and third week before Easter last year. Obviously, you would then have a very substantial increase in business, in such a comparison, which would tend to wash out during the next week, so that the only fair way to judge would be the entire month.

Q. Do you have such comparison? A. I do.

Mr. Weisman: Just a moment. I ask that the entire answer be stricken out as irresponsive, argumentative, giving a conclusion of the witness, with such words and superlatives "very great slump," and all that, all of which is not competent in reply
2922 to this question.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Will you make a comparison, then, of April?

By Mr. Haycraft.

Q. Do you recall having testified as to the total store figures for the month of May, main store figures, in response to a question propounded by counsel for the respondent? A. I do.

Q. I will now ask you to testify as to the total sales of the three affected departments, it having been the subject of your testimony heretofore? A. The three affected divisions of the business showed an increase of 3.3 per cent. for the month of May.

Q. As compared with the main store?

Mr. Weisman: Now, just a moment. I object to any comparison as not being proper redirect examination. 2924

Examiner Bennett: Overruled. You may answer.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. As compared with that of the main store. A. The main store showed an increase of 7.1 per cent.

Q. Will you make the same comparison for the month of June? A. For the month of June the three affected dress divisions showed an increase of 4.5 per cent., and the main store showed an increase of 11.2 per cent.

Q. Now, for the first twenty-four days of July, will you make the same comparison? A. The affected dress divisions showed a decrease in business of 9.9 per cent., and the main store showed an increase of 8.6 per cent., through July 24. 2925

Q. Now, in these three divisions, the three departments of divisions, I will ask you whether or not different priced lines of dresses manufactured by members of the Guild are found?

Mr. Weisman: I object to it as not proper redirect examination.

Examiner Bennett: Overruled; you may answer.

Mr. Weisman: Exception.

A. The answer is "Yes."

By Mr. Haycraft.

Q. I will ask you further whether each department has low-priced lines and high-priced lines of Guild merchandise?

Mr. Weisman: Objected to as not proper redirect
2927 examination.

Examiner Bennett: I think that is in the record, is it not?

Mr. Haycraft: It may be.

Examiner Bennett: Without any dispute?

Mr. Haycraft: It may be.

Examiner Bennett: Without any questioning on cross? I will sustain the objection.

By Mr. Haycraft.

Q. I will ask you whether or not in your judgment or opinion, Seegal, a comparison of the total volume of sales of the three dress divisions with the main store fully discloses the effect on the various lines of dresses, price lines
2928 of dresses in those divisions——

Mr. Weisman (interposing): Objected to.

By Mr. Haycraft.

Q. —of the red carding by the Guild?

Mr. Weisman: Oh, I object to that as incompetent, irrelevant and immaterial, and now seeking to substitute the opinion of this witness for the

determination of the Commission and the Circuit Court of Appeals and everybody who is going to read this record.

Furthermore, it is not proper redirect examination; it is an argument. He is now asking the witness to argue his case for him.

Examiner Bennett: I think it is in the record already; I will sustain the objection.

Mr. Weisman: Thank you.

Mr. Haycraft: I had not any further redirect.

Examiner Bennett: All right.

Mr. Haycraft: I do want to say this, however, that I think the witness should be given an opportunity to make an explanation—— 2930

Mr. Weisman (interposing): Wait until I get finished.

Mr. Haycraft: —of the wedding gown episode, in defense of his own credibility, and, with that in mind, I will ask the witness to testify——

By Mr. Haycraft.

Q. I will ask the witness to testify as to whether or not he, in his official position, gave instructions as to where, or under what circumstances, the employees of Filenes were to obtain the wedding dresses that he was unable to obtain from the Guild manufacturers?

Examiner Bennett: I will let him answer that. 2931

A. I did give instructions, in that wedding dress episode. The divisional merchandise manager of that department, Mr. Gross, came to me——

Mr. Weisman (interposing): Now, I object to this business "came to me," and "said to me," and "did with me." He was asked in the question what instructions he gave. Now, this is a highly intelli-

gent, skillful witness, and I submit that he knows what that question is, and if he does not remember, I ask that it be read to him again, and then he may have it before him. It is not necessary to start in with one of these summations for the Commission. We have no jury here.

Mr. Haycraft: I think, Mr. Examiner, that when the credibility and the integrity of the witness has been attacked, that the counsel for the respondents who made the attack should not be in position to dictate the terms under which the witness should reply.

2933 Mr. Weisman: I submit that we are in a court—

Mr. Haycraft: —and I submit——

Mr. Weisman: We are supposed to have an orderly procedure, and I submit that this procedure should go on question and answer. You have asked a question, and I submit I am entitled to an answer. The most you are entitled to is an answer and not a stump speech.

May we have the question read?

Examiner Bennett: Yes.

(Question read.)

Examiner Bennett: The objection is overruled; you may go ahead with your answer.

Mr. Weisman: Exception.

2934 A. Mr. Gross, the divisional merchandise manager, came to me about this problem. He told me at the time that they were quite sure that those dresses were on sale in a store in New York. I told him that we must do everything, regardless of cost, to satisfy the customers in a situation like this. We could not give the customers the alibi about the Guild that, if necessary, and I presume it would be necessary, we must buy those dresses in that store in New York at full retail price. I gave him orders that he was to do so.

The dresses came in, the customer was satisfied, and that is the last that I know, and that the management of Filenes knows of that transaction.

Mr. Haycraft: That is all.

Recross-examination by Mr. Weisman.

Q. I understood you to testify a moment ago in your efforts, as stated by Mr. Haycraft, to clear your reputation of the charge of lack of credibility, that nobody in the management of Filenes knew anything more about this wedding dress transaction than you have just testified to? A. Correct. 2936

Q. Now, will you kindly tell us—no. And when you so testified, in your effort to clear yourself of any charge of lack of credibility, you testified to that statement of mind in the management as being a fact; is that so? A. Yes, sir.

Q. Now, did you ever discuss this with Mr. Louis Kirstein? A. I never did, because he was away——

Q. (Interposing) Wait a moment. Did you? A. No, no.

Q. Is Mr. Kirstein in the management of Filenes Sons Company? A. Yes, sir.

Q. Then, how do you know whether or not Mr. Kirstein ever knew about this or had anything to do with it? A. Because he was away on the Caribbean Sea during the entire time this episode took place; it would be nothing 2937 short of miraculous for him to know anything about it.

Q. Now, what about Mr. Lincoln Filene? A. Mr. Lincoln Filene would not know about this unless it came through either Mr. Wright or myself, and it did not come through either one.

Q. What was the date of this wedding dress transaction? A. This wedding dress transaction was either the end of February or very early March.

Q. How do you know what the buyer or merchandise manager knew? A. You want to ask each question separately?

Q. Well, how do you know what the merchandise manager knew? A. The merchandise manager knew——

Q. —as distinguished from what he told you he knew? A. The merchandise manager—all these things function through me to the merchandise manager.

Q. I see, and you would have it in your effort to clear yourself of the charge of lack of credibility, that because they cleared through you you know whatever is in their mind; is that so? A. I would know that they would not know about this transaction; at least, it was quite un-

2939 likely that they would know, unless I knew——

Q. Oh. A. Because it cleared through me.

Q. Now, your statement is that the thing is unlikely; is that it? A. Unlikely enough so that I could make a good wager on it.

Q. Oh, your testimony is of the nature of things that one wagers upon; is that it?

Mr. Haycraft: Objected to.

A. When I am sure of a thing, I wager to it.

Q. I see.

Mr. Haycraft: Mr. Examiner——

2940 *By Mr. Weisman.*

Q. You think that helps clear your credibility?

Mr. Haycraft: Just a moment.

Mr. Weisman: All right. I think it is sufficiently plain.

Mr. Haycraft: I move to strike the last two questions and answers referring to subordinates, and the testimony of this witness was that the management of Filenes——

Examiner Bennett: Granted.
Mr. Weisman: Exception.

By Mr. Weisman.

Q. Do you look upon your merchandise manager as part of the— A. Not strictly speaking.

Q. When you said you knew what was in the management's mind— A. Yes, sir.

Q. Did you mean to testify that you included in that omniscience which you possessed what was in the merchandise manager's mind, too?

Mr. Haycraft: Objected to as to form; it is objectionable, Mr. Examiner. 2942

A. I meant——

Mr. Weisman: What is objectionable about it?
Mr. Haycraft: It is offensive.
Examiner Bennett: I will let him answer.

By Mr. Weisman.

Q. You included the merchandise manager? A. I would like to include him; yes, sir.

Q. Yes. In other words, you are quite willing now to testify that you even knew what was in the merchandise manager's mind; is that it?

Examiner Bennett: The Examiner will make his ruling as to striking that. 2943
Mr. Weisman: You mean he may answer?
Examiner Bennett: Yes.
Mr. Weisman: Yes.
The Witness: What is the question, please?
(Question read.).

A. Yes, because more——

By Mr. Weisman.

Q. Yes, that is enough. A. Yes, sir.

Q. In addition to your other qualifications which make you the assistant to the vice-president, and the assistant of the manager, would you tell me, in all seriousness, whether or not it is your claim that you are also a mind reader?

Mr. Haycraft: Objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: Well, now——

2945 *By Mr. Weisman.*

Q. Well, are you a mind reader?

Mr. Haycraft: Objected to.

Examiner Bennett: Please do not get farcical in your cross-examination, Mr. Weisman.

Mr. Weisman: Well, he is a man that can tell what is in somebody else's mind.

Examiner Bennett: Please——

By Mr. Weisman.

Q. You were asked on redirect examination about when you had placed the orders with the manufacturers referred to on Commission's Exhibit 358; do you remember that?

2946 A. Yes, sir.

Q. And you testified, I believe, that you had placed such orders for a period of time, either immediately before February 17, of differentiating from the 19th, or in some cases long before; is that correct? A. Yes, sir.

Q. And at that time when you placed those orders you were still co-operating with the Guild in its policy, and its then activities, of protection of original styles? A. Yes, sir.

Q. And that was known to the manufacturers when they accepted your order, was it not? A. Naturally.

Q. And you knew when you gave them that order that they then would not take the order if you were not co-operating with them in their activities as they then were, and in their purposes in eliminating style piracy? A. Yes, sir.

Q. Now, in your efforts to explain why you did such a good business in February, I understood you to say that you did that good business because you had such a big stock? A. That was not the only reason.

Q. Well, was that not the only reason you gave Mr. Haycraft? A. No, sir; I pointed out that we did as well 2948
as the rest of our store, and also the competition had a good increase in business, too, at that time.

Q. Did you not speak about the stock, a big stock? A. Yes, sir.

Q. $37,000? A. Yes.

Q. Well, was not that an inducing cause for this big business? A. That helped to offset a loss we may have had from being red carded.

Q. Well, now, then, by that, you did not understand Mr. Haycraft's questions, did you——

Mr. Haycraft: Wait a moment.

By Mr. Weisman.

Q. Did you? A. Certainly. 2949

Mr. Haycraft: Wait a moment. That all goes back to the cross-examination.

By Mr. Weisman.

Q. Did it?

Mr. Weisman: It goes back to your redirect.

Mr. Haycraft: No, no.

Mr. Weisman: And it comes right forward, if I may be permitted to go on. Never mind where it went back to; let me see.

By Mr. Weisman.

Q. Were you not asked a question somewhat along this line: In your opinion, what was the reason for the advance in the sale in these departments which were affected by the Guild, is that not so? A. Yes, sir.

Q. And did not you give as your first reason the story of a much heralded strike, and that because of that you had put in a lot of merchandise in stock, and did you
2951 not even use the words that "with the consent of the management and with its knowledge, the buyer put in $37,000 worth of merc' andise"; is that not so? A. That is correct.

Q. And when you so testified, did you not do that in order to impress the Commission, or the Examiner, or whomever your testimony came before, that the reason that you had such good business was because you had a big stock? A. Of course, that was one of them.

Q. Of course. Let us agree on it, then. A. Yes, that was one of the chief reasons.

Q. That was the chief reason. A. New fresh stock.

Q. I see. New fresh stock. Well, is not it Filenes practice for them to always have on hand a sufficiently new fresh stock? Was not that your thought in January? A.
2952 We tried to have new fresh stock.

Q. And in December. A. We tried to have new fresh stock.

Q. And as a matter of fact because of the imminence of this strike pending, it was harder to get a new fresh stock in February, for example, than it would have been in January? A. It was harder, but we bought a lot more.

Q. But I say, it was harder. A. A little harder.

Q. Sure, just a little harder. A. Just a little bit harder.

Q. You are seeking now to minimize the hardness, is that it? A. I am not, I am trying to fairly state——

Q. Yes. A. —state the difficulties, if any, in getting merchandise for February; they were not great.

Q. Well, let us see. On your redirect examination you were very glib in describing the offset, or what you call the slump, due to an increase in business in the departments affected by the Guild policies.

Mr. Haycraft: That is objected to, Mr. Examiner.

By Mr. Weisman.

Q. Is not that so? 2954

Mr. Haycraft: That was stricken, Mr. Examiner.

Mr. Weisman: Well——

Examiner Bennett: Will you read the question?

Mr. Weisman: I will withdraw it, Judge.

Examiner Bennett: All right.

Mr. Weisman: I do not want to waste too much time.

Examiner Bennett: You are going into your recross-examination for some time, are you?

Mr. Weisman: Yes, Judge.

Examiner Bennett: Well, we will take a recess.

Mr. Weisman: Thank you.

(There was a short recess taken.)

Examiner Bennett: You may proceed, Mr. Weisman. 2955

By Mr. Weisman.

Q. On your redirect examination I believe that you gave some figures comparing the volume of what you called the affected departments with the volume done with the entire store? A. With the entire upstairs.

Q. Upstairs store? A. Main store.

Q. For such probative weight as it may have with the Federal Trade Commission in view of your redirect testimony, I would like to ask you for some figures with regard to certain other departments, generally. I am going to go, first, to the glove department.

Mr. Haycraft: I object, if your Honor please.

Mr. Weisman: Let me finish, please—now be a good fellow and let us get along without any friction on this thing—I would like to know from you—well, I will just continue the question:

By Mr. Weisman.

2957 Q. —to the glove department. I would like to know from you a statement as to the total business done in the glove department of your store and in all related stores for the month of July, 1935; that is, the twenty-four days of the month as compared to July, 1936?

Mr. Haycraft: Now, Mr. Examiner, that is not proper recross examination in the light of the redirect examination. As you will recall, on cross examination, the witness was asked certain questions with respect to his total sales for the months from June and for July, which he gave, not from, but for the months of June and July, which he gave on the record.

2958 An attempt was made at that time to bring in the testimony which is now being asked, and was properly ruled out by the Examiner. There was certainly no question on redirect examination which would lay any foundation in this record for this request.

Mr. Weisman: May I be heard?

Mr. Haycraft: I have not finished.

Mr. Weisman: Go ahead.

Mr. Haycraft: The only purpose of comparison, or for asking for the comparison that was made by the witness upon the figures, was to straighten out what was left up in the air as a partial picture of the comparison in an attempt made by counsel for the respondent as to have the statement of the witness as to business done in the Dress Department—

Mr. Weisman: May I be heard?

Examiner Bennett: Yes, but make it as short as your can, please.

Mr. Weisman: What is that, your Honor?

Examiner Bennett: Make it short, please.

Mr. Weisman: Your Honor, I can make it just as 2960
short as I can consistent with clarity.

Examiner Bennett: Yes, please do.

Mr. Weisman: On direct testimony this witness testified that the Guild policy had an unfavorable effect upon his business, or words to that effect. I do not expect to quote the exact language.

Examiner Bennett: Yes.

Mr. Weisman: Thereupon, upon cross-examination, I elicited from him the information which tended to show that the only way that this unfavorable reaction could possibly manifest itself was that their sales for the period 1936 when that policy was in operation were greater than sales for the year before, and then on his redirect examination, and 2961
not on my cross-examination, Mr. Haycraft elicited that the advance of the Dress Department, affected by the Guild, was not as great as the advance that the store made generally. I submit that that was proper redirect examination, and that I am now entitled to show in a large number of the related departments, which are totally unaffected by the Guild policy, the recession in volume of sales, notwithstanding testimony that the store generally went

ahead, was anywhere from 40 per cent. or from 60 per cent. downward, and that instead of making an advance it had, in effect, and in actuality, gone backwards. I submit that in view of the manner in which Mr. Haycraft opened up the door I have this substantial right to show these figures.

Examiner Bennett: If there is any objection the objection is sustained.

Mr. Haycraft: There is an objection.

Examiner Bennett: It is sustained.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

2963 Mr. Weisman: Then I make this offer of proof, if the witness had——

Mr. Haycraft: I object to this offer of proof. It is simply a duplication.

Examiner Bennett: You can make it if it has not already been made.

Mr. Haycraft: It is already made on the record.

Mr. Weisman: It is not already on the record.

I will make this offer of proof: That if I had been permitted to go into the questions as indicated by my first question—and I will not ask the succeeding questions as I understand the Examiner will take the same action in regard to each one of them, and that the same objection will be made.

2964 Mr. Haycraft: Yes.

Examiner Bennett: Yes.

Mr. Weisman: In that case, I will make this offer of proof that if I had been permitted to go into these questions as indicated on my first question, the proof would show that:

For the period of twenty-four days of July, 1935, in the Junior Glove Department there was a total of $1202 done in 1935, while in 1936 the total was $779.

That in the Glove Department, Fabric and Lined, in the twenty-four day period, July, 1936, the total was $5,006, notwithstanding the fact that for the same period in the prior year, 1935, the total was $5,800.

In the Hosiery Department for the aforesaid period, the total done in 1936 for that period was $1,320 against—no, that was wrong—it was $2,419 for 1936 as against $2,832 for 1935.

That in the Gotham Hosiery Department for that period, in 1936, the total was $1,655 as against $1,938 for the year 1935; that is all of this particular period. 2966

And——

Mr. Haycraft: I move to strike that out.

Mr. Weisman: Wait until I finish and then make one motion.

That in the Hairnet Department, the total for July, 1936 period, was $1,320 as against the 1935 period of $1,336.

That in the Miscellaneous Jewelry Department, the total for 1936 was $4,736 as against $4,942 for the same period in 1935.

That in the Yarn Department, the total for the 1936 period was $1,647 as against $1,745 for 1935 for the same period.

That in the Knit Underwear Department the total for 1936 was $2,332 as against $3,119 for the 1935 period. 2967

That in the Women's Unionsuit Department, the total was $1,036 for the 1936 period as against $1,371 for the 1935 period.

That in the Rayon and Cotton Underwear Department for Women, the total for 1936 was $6,414 as against $6,951 for 1935—or is this $6,915——

That in the Misses' and Children's Knit Underwear Department, the total was $249 for the 1936 period as against $269 for the 1935 period.

That in the Boys' Furnishings Department, the total 1936 period was $3,499 as against $3,783 for the 1935 period.

That in the Women's and Misses' Shoe Department, the total for the 1936 period was $7,731 as against $7,801 for the 1935 period.

That in the Boys' Underwear Department, the total for the 1936 period was $3,095 for the 1936 period as against $3,585 for the 1935 period.

2969 That in the Belt and Jewelry Department, it was $1,800 for the 1936 period as against $2,155 for the 1935 period.

That in the Knitwear Department it was $2,517 for the 1936 period as against $3,546 for the 1935 period.

That in the Shirt Department it was $15,281 for the 1936 as against $16,229 for the 1935 period.

That in the Collar Department it was $445 for the 1936 period as against $498 for the 1935 period.

That in the Handkerchief Department it was $619 for the 1936 period as against $639 for the 1935 period.

That in the Men's Suit Department it was $3,669 for the 1936 period as against $7,078 for the 1935

2970 period.

That in the Summer Suit Department it was $12,651 for 1936 as against $16,440 for the 1935 period.

That in the Bathrobe Department it was $1,406 for the 1936 period as against $1,771 for the 1935 period.

That in the Nursery Supplies Department it was $2,922 for the 1936 period as against $3,460 for the 1935 period.

That in the Infants' Wear Department it was $2,242 for the 1936 period as against $2,571 for the 1935 period.

That in the Infants' Suit Department for the year 1936 it was $1,304—that is, for the 1936 period—as against $1,581 for the 1935 period.

That in the Infants' Knitwear Department it was $933 for the period in 1936 as against $1,022 for the same period in 1935.

That in the Misses' Skirts Department it was $1,374 for the 1936 period as against $1,542 for the 1935 period.

That in the Misses' Sweaters Department it was 2972
$1,332 for the 1936 period as against $1,467 for the 1935 period.

That in the Misses'—I beg your pardon—that in the Women's Skirt Department it was $164 for the 1936 period as against $513 for the 1935 period.

That in the Women's Sweaters Department it was $1,332 for the 1936 period as against $4,426 for the 1935 period.

That in the Expensive Sweaters Department it was $3,283 for the 1936 period as against $4,472 for the 1935 period.

On the previous one it should have been $3,332.

That in the Women's Inexpensive Coats—well, I do not think——

2973

By Mr. Weisman.

Q. Is that a department properly in this? A. No.

Mr. Weisman: All right. We will leave that out.

That in the Women's Underwear Department it was $5,945 for the period in 1936 as against $8,834 for the 1935 period.

That in the Women's Department for Extra Sizes it was, for the 1936 period, $1,403, and as against $1,801 for the 1936—1935 period. I will restate that so it will be clear: That in the Women's Department for Extra Sizes for the 1936 period it was $1,403 as against $1,801 for the 1935 period.

That in the Misses' and Girls' Underwear Department it was $831 for the 1936 period as against $1,080 for the 1935 period.

That in the Millinery Department it was $3,867 for the 1936 period as against $5,171 for the 1935 period.

2975 I would further say that with regard to this offer of proof these departments were taken, or, rather, these figures were taken from figures furnished us by Wm. Filenes Sons Company and were taken as more nearly approximating those departments in which ladies' apparel and the kindred things are usually found, and as evidence that in the departments that were totally unaffected by the Guild the off-sale is much larger than in 1936 and that they went off to a large—to a greater degree than—that they went off to a very large degree, while in those departments where the Guild policies were claimed to be effective the sales went up.

2976 For the purposes of the record, I would say that I also, without going into detail because I do not want to waste time by making a similar offer of proof to each individual item, that it shows substantially the same general trend with regard to the month of June, 1936, as contrasted with June, 1935, and also the same offer of proof with regard to the month of May, 1936, as contrasted with the month of May, 1935, showing that in both of those things in those various departments there was generally that same type of recession in volume of

sales as there were in the ones enumerated in greater particularity, and I offer to prove in the same particularity the same general type of recession as to those departments for both of those two months laterally mentioned.

Mr. Haycraft: I move to strike out all of this statement.

Examiner Bennett: The same statement may be stricken as incompetent, immaterial and irrelevant.

Mr. Weisman: I ask the statement of tender of proof be permitted to stand so——

Examiner Bennett: The tender of proof is in 2978
the record, physically, of course. I do not take it out. It is merely indicating that the Examiner was not going to pay any attention to it.

Mr. Weisman: I except.

That is all I have for this witness.

Mr. Haycraft: That is all I have for this witness. I have no further questions for the witness.

Examiner Bennett: You may be excused.

(Witness excused.)

Mr. Haycraft: I will call Miss Kimball to take the stand.

MATHILDE KIMBALL was thereupon called as a witness 2979
for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. What is your name, please? A. Mathilde Kimball.
Q. How do you spell your first name? A. M-a-t-h-i-l-d-e.
Q. How do you spell your last name? A. K-i-m-b-a-l-l.

Q. Where do you live? A. 8 Chiswick Road, Brookline.

Q. Massachusetts? A. Massachusetts.

Q. What is your occupation? A. Buyer for Wm. Filenes Sons Company, Boston, Mass.

Q. What department? A. Misses' machine made dresses. This department was formerly known as 6-10-E.

Q. How long have you been buyer for that department? A. Officially since February 1, 1936.

Q. What did you do? A. Assistant buyer, same department.

Q. For how long a period of time? A. For three years; about three years.

Q. What priced dresses are handled in that department? A. $4.75 primarily, some $5.75.

Q. When was that department originated in the Filenes Store?

Mr. Weisman: I think it must have been before this young lady had that position.

A. I think it was originated in 1928 on the same——

Mr. Weisman: I ask that the answer be stricken out. Obviously, this witness is not competent to prove the department. It is not competent to prove the department through her; as I understand it, she has been with Filenes, and she has been assistant buyer since 1933.

The Witness: I have been in the store for eight years, though.

Mr. Haycraft: Owing to the objection, I will ask the witness this:

By Mr. Haycraft.

Q. I will ask you how long you have been in the employ of Wm. Filenes Sons Company? A. Since July, 1928.

Q. Between July, 1928, until the time you became assistant buyer, what did you do? A. I was in the training squad. I did work variously; in other words, I had worked in the advertising office and in various departments in the store.

Q. Do you know when, as a matter of fact, the department, of which you are now buyer, was started by Filenes? A. Well, it is an outgrowth of the House Dress Department.

Mr. Weisman: I ask that the answer be stricken out. The answer is one that can be answered "yes" or "no."

Examiner Bennett: It may be stricken. 2984

A. I do not know exactly when, but it has been there as long as I have been in the store.

Mr. Weisman: I will concede that.

By Mr. Haycraft.

Q. I show you Commission's Exhibits 352-C, 352-D, 352-B, 349, 336-B, 336-A, and I will ask you whether or not you can identify in any way these papers? A. Yes, sir; I can.

Mr. Weisman: Wait a minute.

Just for the purpose of an orderly procedure, may we have them identified one at a time because it 2985 may be that she can identify some and cannot identify others.

Mr. Haycraft: Let me alone. Mr. Examiner, I will get along if you will let me alone. This is merely a preliminary question and I will take them up one by one.

Mr. Weisman: Why not take this up one by one to begin and we will save a lot of time.

Mr. Haycraft: I will conduct my examination as I deem proper.

By Mr. Haycraft.

Q. Showing you Commission's Exhibit No. 35— A. I do identify them.

By Mr. Haycraft.

Q. Does your signature appear on every one of these exhibits? A. On this one it does.

Q. Commission's Exhibit No. 352 for Identification? A. Yes, sir.

2987

Q. What are those? A. Those are the returns to Lombardy, which dresses were not accepted by me.

Mr. Haycraft: I offer this in evidence now.

Mr. Weisman: Now, you can bring them over here to me if you do not want me to sit up.

Mr. Haycraft: Yes, I will bring them over to you with pleasure if you will just stay there.

Mr. Weisman: I object to the introduction of these into evidence. We have the witness here. We do not have to have her declaration with regard to these documents show what happened, because she can tell us what she did. This is purely secondary evidence. This is now an attempt to bring this witness here and show that she wrote at some other time statements, and I submit that this evidence would be what she did and not an effort to substantiate her story when it has not even been questioned. Maybe I would not question it or deny it. Maybe I would not deny that there were goods returned because they were copies of Guild merchandise. There is nothing wrong about that. This is not competent to prove anything. Why does not counsel ask her what she did?

2988

Mr. Haycraft: If you will recall, Mr. Examiner, the history of these exhibits is that they were identified in New York.

By Examiner Bennett.

Q. Are these cards that you sent out? A. These cards were sent out by Filenes.

Q. Were these cards that you have identified sent out in the ordinary and regular course of business? A. Yes, sir.

Q. By Mr. Filene? A. Yes, sir.

Q. Is that the— A. Usual procedure.

Q. Is that the course of Filenes, of Mr. Filene in the 2990
case or in cases of this kind; is that the usual course of procedure adopted by him? A. Yes, sir. Whenever I had to make returns on goods and dresses were shipped back, we issued cards—wrote cards to the manufacturer telling them that we had to return the dresses because they were copies of Guild merchandise.

Q. That they were shipped back for that purpose? A. Yes, sir.

Examiner Bennett: Objection overruled. The document will be received.

Mr. Weisman: Exception.

May I also have an exception, your Honor, on the further ground that it is incompetent, immaterial and irrelevant for any purpose whatever? 2991

Examiner Bennett: Yes.

(The documents referred to, heretofore marked for identification Commission's Exhibits 352-C and 352-D, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 352-B for Identification and ask you if you can identify that as a carbon copy of a letter sent to you? A. Yes, sir.

Q. This is a copy of an original letter received by you from Lombardy Frocks?

Mr. Weisman: I object to this. Where is the original? I further ask that counsel be admonished by the Court to cease from describing the exhibit and let the witness describe them unless he wants to take the stand and testify. He is not under oath as yet.

2993

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. Yes.

By Mr. Haycraft.

Q. Do you recall receiving the original? A. Well, as to that, this is an answer to the shipment that was made on these two cards that you just showed the Judge, telling us that they could not accept the dresses.

Mr. Weisman: I object.

Mr. Haycraft: I offer this carbon copy in evidence.

2994

Mr. Weisman: I object, in the absence of the original, it is incompetent, immaterial and irrelevant; in fact, it is wholly incompetent. It now appears that this is a letter, a carbon copy of a letter written by somebody else. She got the original letter, if anything. Furthermore, I object on the ground it is incompetent, immaterial and irrelevant, and, furthermore, that in view of the stipulation that the Commission has made in this case with

regard to the immateriality as to whether dresses are copies or not, that their entire proof is directed to the question of an alleged boycott; I furthermore submit that the letter is material if it were competent, which it is not, I urge.

I object to the witness talking with counsel while she is on the witness stand.

By Examiner Bennett.

Q. Where is the original of this letter; do you know? A. I do not know. I believe it may be in the office of our attorney. I do not remember.

Q. Where did you get this carbon copy? 2996

Mr. Haycraft: I handed it to her. I got that carbon copy from Mr. Ballon in New York, who identified that as having come from the files of the Lombardy Frocks.

Examiner Bennett: This seems, on its face, to be a duplicate-original. It is signed and complete so far as the communication is concerned.

The objection as to its not being an original is overruled and it is received in evidence as Commission's Exhibit 352-B.

(The document referred to, heretofore marked for identification Commission's Exhibit 352-B, was marked as an exhibit and received in evidence.) 2997

Mr. Weisman: I except.

Examiner Bennett: All right.

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 349—I thought it was 347 a while ago but it is 349—I should have used 349 instead of 347—anyhow, I show you Commission's Exhibit 349 for Identification and ask you if you can identify it? A. Yes, sir.

2998 *Mathilde Kimball—For Commission—Direct.*

Q. What is it? A. This is the balance of a shipment that we had made on some dresses which we made to the Excellent Dress Company.

Q. Do you recognize the signature on there; is that of Mr. Drew? A. Yes, sir. I did not sign that, but my clerical assistant did, and he was instructed to return these dresses; they were dresses we had sold up until the time that we were notified that they were copies of Guild dresses.

Mr. Haycraft: I offer that in evidence.

Mr. Weisman: Same objection—I presume the same ruling.

2999 Do you want to see it?

Examiner Bennett: Well, I want to see it. I do not presume.

Mr. Weisman: My objection goes to the competency of any of this offer, if your Honor please. We have here the witness who made the return and she could testify of her own knowledge. It is secondary evidence when the primary testimony is instantly available.

Examiner Bennett: Overruled. Received. This is a duplicate copy.

Mr. Weisman: Exception.

Examiner Bennett: Yes.

3000 (The document referred to, heretofore marked for identification Commission's Exhibit 349, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit No. 336-A and ask you if you can identify that?

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant for any purpose whatever.

Examiner Bennett: Overruled. Go ahead.

A. This is a return from Filenes.

Mr. Weisman: Now, the answer to that, will your Honor tell her, is "yes" or "no." She was asked if she could identify that.

By Examiner Bennett.

Q. Can you? A. Yes, sir, I can.

By Mr. Haycraft.

Q. Do you know whether or not—first, do you know the signature attached to this letter? A. Yes, sir, I do. It is not mine, but it was the signature of my superior at that time; that is, after the time of the department of which I was then the assistant buyer. 3002

Q. At the time? A. Yes, sir.

Q. I also show you Commission's Exhibit No. 336-B for Identification and ask you if you can identify that in the same way; is that the signature of the division manager? A. Yes, sir; that is the signature of the division manager.

Mr. Haycraft: I offer these two in evidence.

By Examiner Bennett.

Q. Miss Kimball, what are they? A. One is a return made from Filenes to the manufacturer, notifying the manufacturer we are going to make the return of a few dresses that were copies of Guild dresses. 3003

Q. That is a form you sent out? A. Yes, sir. And the other one is the answer from said manufacturer to our division manager telling him we are not interested whether or not he considers——

Q. Well, that is all right. That was received by Filenes? A. I think so.

Mr. Weisman: No. You are mistaken.

The Witness: The second one was.

By Mr. Weisman.

Q. If you are saying to the Court that it was received by Filenes you are wrong? A. It was an answer.

Mr. Weisman: They are both letters sent out by Filenes. The girl is mistaken.

The Witness: This is the letter in answer to a letter received from Excellent Dress Company.

Mr. Weisman: May I examine on the voir dire on these two?

3005

Examiner Bennett: You may examine on the voir dire.

EXAMINATION ON THE VOIR DIRE.

By Mr. Weisman.

Q. This letter was signed by Mr. Drew? A. I believe that is his signature.

Q. You know it? A. Yes.

Q. Mr. Drew is in Boston? A. Yes, sir.

Q. Over at the store? A. No, he is not.

Q. Where is he? A. He is right here in the court room.

Q. He happens to be right in the court room? A. Yes, sir.

3006

Q. How about Mr. Shields? A. What?

Q. Where is he? A. He is present.

Q. What? A. He is present.

Q. Where? A. In the court room.

Mr. Weisman: I object to the introduction of these documents in evidence on this examination as not the best evidence. Both of these men are present. It appears that both men are in court.

Mr. Haycraft: I will call them if the Examiner feels it is necessary.

Mr. Weisman: I want you to prove your case in the way that it should be; I want you to prove your case with what I believe to be competent testimony.

Mr. Haycraft: I will prove my case with what I believe to be competent testimony. I am not interested in what you believe.

Mr. Weisman: The very idea. Good. That usually happens before a reversal.

Mr. Haycraft: I think you will probably get as many reversals as I do, and maybe more.

Mr. Weisman: Pride goeth before a fall, and a haughty spirit before destruction. 3008

Mr. Haycraft: Look out.

Examiner Bennett: The objection is overruled. They will be received as Commission's Exhibits Nos. 336-A and 336-B, previously marked for identification.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

(The documents referred to, heretofore marked for identification Commission's Exhibits 336-A and 336-B, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. These letters refer to returns of merchandise to manufacturers? A. Yes. 3009

Q. I will ask you to testify when you first began your policy or practice of returning merchandise to manufacturers because or upon the requests of the Fashion Originators Guild upon the ground that they were copies of Guild members' merchandise? A. Some time during the year, I would say August, 1933, from there on.

By Mr. Haycraft.

Q. I will ask you whether or not you were required or you did find it necessary to make such returns continuously from that time? A. Yes, sir.

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant. Young lady, you should not answer until I make my objection. No proper foundation laid. The testimony, furthermore, is just merely cumulative. There has been no objection offered to her prior question, which was that she did since August, 1933, when they signed up with the Guild. I thought I would let her answer, and if I did, she might say that they did not do it. I thought maybe he was trying to discredit his prior witness.

3011

Examiner Bennett: Are you trying to show, and did not your witness Seegal cover all of this on his testimony?

Mr. Haycraft: This is a foundation question. I have not got to the real question as yet.

Mr. Weisman: May we find out what this is the foundation for? I think we are entitled to be enlightened in that regard.

Examiner Bennett: Yes.

Mr. Weisman: Then, what is the foundation?

Mr. Haycraft: You will find out later.

3012

Mr. Weisman: Your Honor has ruled that we may know that.

Examiner Bennett: No. I believe not. Your request is denied.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. What was the procedure followed in your department with respect to determining when a dress should be returned?

Mr. Weisman: Objected to as incompetent, immaterial and irrelevant, especially in view of counsel's stipulation.

Examiner Bennett: Well, it may not relate to that. I will hear it. Objection overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Answer. A. Whenever the representative of the Guild, Miss Brady, would come into the department and show us a picture, claiming that was the picture of a Guild registered origination, she would ask me whether I had that particular dress, and—we would—at first we would 3014
immediately return that dress, if we had it, whether it was in the receiving room or on the floor. Some time later we had her prove that it was a copy of a Guild dress. Oftentimes—ah—these dresses were not exact duplicates. We immediately returned the dresses upon her request. Sometimes she came into the department and took the dresses right off of the floor and put them into the shipping room and just issued an order for those dresses to be returned to the manufacturer.

Q. Did any change of policy of handling returns occur in the late fall of 1935 or early fall? A. I think it was about that time that we had little slips given to us.

Q. Given to you by whom? A. By Miss Brady.

Q. Yes. A. The little slip told us—we had to sign the 3015
slip telling—this slip told us about——

Mr. Weisman: I object. These slips ought to be produced. They will speak for themselves.

By Mr. Haycraft.

Q. Have you one of those slips?

By Mr. Weisman.

Q. Are there any in Boston? A. Yes.

Q. Has Mr. Seegal one?

Mr. Seegal: Yes.

Mr. Haycraft: Would you let me have it?

Mr. Seegal: Here it is, Mr. Haycraft.

Mr. Haycraft: I ask that this slip be marked Commission's Exhibit 359 for Identification.

(The slip referred to was marked for identification, "Commission's Exhibit 359.")

3017 *By Mr. Haycraft.*

Q. I show you Commission's Exhibit 359, for identification, and ask you if this is one of the slips you have in mind? A. Yes.

Mr. Haycraft: I offer that in evidence.

Mr. Weisman: I have no objection to this paper going into evidence, Judge. Of course, I have an objection to all of the testimony of this witness.

Examiner Bennett: It will be received. Objection overruled.

Mr. Weisman: Exception.

(The document referred to, heretofore marked for identification "Commission's Exhibit 359," was marked as an exhibit and received in evidence.)

3018 *By Mr. Haycraft.*

Q. On this date, I think you stated it was August, 1935? A. Yes.

Q. Was there any change in the frequency with which dresses were returned from your department to manufacturers?

Mr. Weisman: I object as incompetent, immaterial and irrelevant. If this practice went on, it made no difference whether it was done frequently or unfrequently; we are here to judge the facts, and if it were wrong, if it were done once, it would make no difference as to that, and if it were right, if it were done times, it could not make it wrong. If it were wrong and it were done only once, it would not make it right.

Mr. Haycraft: It might have some difference as to the effect.

Mr. Weisman: Impossible.

Examiner Bennett: Overruled. 3020

Mr. Weisman: Exception. Furthermore, this is a conclusion of the witness. To say "frequently" means her conclusion, and where they have the return book and a record that will give it with exactitude, I submit that is the best evidence of these returns and not this witness' statement of whether it was frequent or unfrequent.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. I should say as time went on it became more frequent. After the $6.75 manufacturers were taken into the Guild, that was natural.

Q. When did you receive notice of that? 3021

Mr. Weisman: I ask that the latter part of the answer be stricken out as irresponsive.

Examiner Bennett: Well, it may be stricken.

Mr. Weisman: Thank you.

By Mr. Haycraft.

Q. What explanation do you have as to the increase in the frequency?

Mr. Weisman: Objected to as incompetent, immaterial and irrelevant. Now we are wandering all over the lot to get this witness to explain these opinions of hers. Certainly this is piling error upon error, I respectfully submit. Before, when I urged this objection, my adversary urged that we were interested in the fact, and now we are substituting fancy for fact.

Mr. Haycraft: We are looking for facts right now and nothing else.

Mr. Weisman: Now we have a question where we are asking for something that is purely a matter of speculation and opinion, and I submit that the question is incompetent, irrelevant, immaterial, and improper in form, leading and suggestive in view of the previous answer.

3023

Examiner Bennett: Overruled. You may answer.

Mr. Weisman: Exception.

The Witness: What is the question?

(Question read.)

A. Well, I am of the opinion, as more of the lower-priced manufacturers were taken into the Guild, clamps were put on the $4.75 cost range.

By Mr. Haycraft.

3024 Q. When was it that the $6.75 was taken into the Guild?

Mr. Weisman: If she knows. After all, you have called her here, and she is just a girl; she is not one of the executives of Filenes, and she is not one of the Guild's executives and we want to be kind to her.

Mr. Haycraft: I hope you are.

By Mr. Haycraft.

Q. If you know. A. I am sorry. I do not know the exact date. I do not buy the $6.75 cost merchandise.

Q. Do you know the approximate date? A. I do not.

Q. Do you know of any way of getting the exact figures at all as to the number of returns from your department? A. I do not have them, but I can get them.

Q. That is, for how long a period back? A. Yes, sir; we can get them.

Q. For how long a period back? A. Right from the start.

Q. What would these returns show?

3026

Mr. Weisman: I object as not the best evidence?

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. What would your records show?

Mr. Weisman: Your Honor, I must object to that again, "What would your records show," when the records are here, and they are in a position to show for themselves what they are and what they will say. I submit that this question is an incompetent question and unfair to ask this young lady.

Examiner Bennett: I will sustain the objection.

Mr. Weisman: Thank you. 3027

By Mr. Haycraft.

Q. In what form are those records?

Mr. Weisman: I object as incompetent, immaterial and irrelevant, what form they are. You mean, are they written or oral records? The only record I know is a written record.

Examiner Bennett: It is objected to, as I understand, as incompetent because not being the best evidence?

Mr. Weisman: Yes, sir.

Examiner Bennett: I will sustain the objection. I think it is a good objection.

Mr. Weisman: Thank you.

By Mr. Haycraft.

Q. At what price were these $4.75 dresses sold? A. $6.95 and $7.95.

Q. Who are your principal competitors? A. Chain
3029 stores such as Lerners, Wilbur Rogers, and various department stores in the City of Boston, and specialty shops.

Q. Since June, 1933, at a time when the Filene store became a member of the Guild, became a co-operator of the Guild, can you testify as to whether or not in your buying of $4.75 dresses you were restricted—whether your buying of $4.75 dresses was restricted in any way?

Mr. Weisman: I object as incompetent, immaterial and irrelevant. It calls for a conclusion of the witness. If he means orders were made and they put the stamp on them, I submit that is a direct question and should be asked of her, but the question as asked, "restricted," might mean anything. I do not know what it means. I am quite sure your
3030 Honor will find it rather vague.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. You may answer. A. I was restricted in buying anything that was a copy of a registered dress. There were many times I did not know whether the dress was a copy or not. When it came into stock it would have to go back.

Naturally I did not want to tie up my money in dresses that were coming in and going back, so I would try to find out if the dress was a copy and if it were, I did not buy it, which meant I was not in competition with my competitors on that dress.

Mr. Weisman: Just a moment. I submit that is a complete answer. The last part of it I ask be stricken.

Examiner Bennett: The last clause is stricken. You are correct.

By Mr. Haycraft.

3032

Q. What effect did this refraining from purchasing, that you have indicated, have upon your department?

Mr. Weisman: I object as incompetent, immaterial and irrelevant, and no proper foundation laid. We are going to get some more of this effect questions and we will wander all over the lot. It is of absolutely no use, and I ask your Honor, in the exercise of your discretion, to limit that type of testimony. Otherwise we will be here for two weeks.

Examiner Bennett: On what? On what do you refer?

Mr. Haycraft: On the sales of the department.

By Examiner Bennett.

3033

Q. Did it have any effect upon the sales of your department? A. Yes, sir; it did. It meant that you could not—

Q. That is all. A. I believe you could——

Q. That is all I wanted to know.

Examiner Bennett: The objection is overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Well, answer the question. A. What is the question?

Q. What is the effect? A. We could not get "hot numbers."

By Mr. Weisman.

Q. What is that? You could not get "hot numbers"? A. No. We could not get "hot numbers."

Mr. Haycraft: I object to interrupting me.

Examiner Bennett: Yes. Let the witness proceed with her answer.

3035

A. Well, as to "hot numbers," that is a term on the market that we use. There were certain numbers there that we call "Forwards," which our competitors had, numbers selling in large quantities at $6.95 that I could not have. Naturally, a young person not seeing any more than that, she would go elsewhere and get that; she would go elsewhere and go to a store where she could get the dress that she wanted, and she stopped coming into my department. You cannot give the exact amount of the loss, but I know that I can say that I did not go ahead as beyond the year 1935 in percentage as we did in other years; that is, in the year 1934 we went ahead 18 per cent. and the year 1935 we went ahead only 5 per cent. This department had been going ahead for several years at a very

3036

great pace, and it did not that particular year. I feel it is particularly due to the fact that I could not carry certain numbers that I should have had, certain hot numbers.

By Mr. Haycraft.

Q. I will ask the witness whether the witness will at this time name some of the manufacturers of hot numbers that she referred to in her last answer?

Mr. Weisman: I object to that as immaterial. If she will identify the hot number manufacturers with some certain particular hot number at some particular time, that would be something we could cross-examine upon.

Examiner Bennett: We will take the questions one at a time and I will then take into consideration the result. Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Answer the question. A. There are three resources that refused to sell, that refused to take my orders with 3038
the guaranty stamp on them. They are Lombardy, Loma, and Noxall.

Q. Located where? A. All in New York City.

Q. When was it that they declined to take your orders with that stamp on them? A. I do not know the date, but I know that I could not do any buying—whenever—right from the start whenever I use the stamp.

By Examiner Bennett.

Q. What year? A. 1934.

Q. Any other year? A. I would say inclusive, like 1933 to 1935.

By Mr. Haycraft. 3039

Q. That is, during that whole period? A. Yes, sir.

Q. When was it that Miss Brady began to shop your department? A. I do not know the exact date. I know she came soon after Filenes had made some agreement with the Guild.

By Mr. Weisman.

Q. Was that in 1933? A. The Guild was in 1933.

Mr. Haycraft: That is all.

The Witness: I think, I am not sure, but I do not think I finished that last question.

Cross-examination by Mr. Weisman.

Q. How long have you been with Filenes?

The Witness: I did not finish that last question. I did not finish on that last question.

3041

By Mr. Haycraft.

Q. Did you have something more that you wished to state, some more manufacturers of hot numbers? A. No, but I would like to add that those manufacturers later on would accept our orders.

Q. Would? A. Yes.

Q. When was that? A. That was quite some time later. I do not know the exact date.

By Examiner Bennett.

Q. Do you know the year? A. 1935 was the year.

Q. Late in 1935? A. I would say the middle of 1935.

3042 *By Mr. Haycraft.*

Q. And from then on, from that time on? A. We have done business with them from that time on.

Q. To the present time? A. Yes, sir.

Q. Does that apply to the manufacturers whose names you have given? A. Yes, sir.

Mr. Haycraft: I have nothing further.

By Mr. Weisman.

Q. Miss Kimball, you mean, do you not, that there was a time in the beginning of the Guild program that these houses wanted the right to sell you copies? A. I do not understand your question.

Q. I am trying to make it easy for you. A. You do not have to try to make it easy for me.

Q. All right. I will try to make it as hard as I know how for you if you would rather have it that way, young lady. A. Well——

Q. When did you become a buyer for this store? A. Of this particular department?

Q. Yes. A. February, 1936. 3044

Q. That is about six months that you have been buyer? A. Yes, sir.

Q. Before that you were assistant buyer? A. Officially.

Q. Both officially—what do you mean by "officially"? What do you mean "officially"? When I said before that you were the assistant buyer, you said "officially." What did you mean by that answer? A. I said officially I was the buyer since February, 1936. Prior to that time I was assistant buyer, but I—I was assistant to a man that had several departments which gave me a great deal more to do than the ordinary assistant.

Q. What do you know about the ordinary assistant; how many assistants have you got in this department? A. I have been assistant in other departments so I have some 3045 direct knowledge of what an assistant buyer has to do ordinarily, an ordinary assistant buyer.

Q. What other departments were you assistant in? A. House Dress Department.

Q. When were you assistant in the House Dress Department? A. During the years 1929 to 1933.

Q. From 1929 to 1933? A. Yes.

Q. Where is the House Dress Department with relation to this Machine-Made Dress Department? A. It is the same.

Q. It is the same department? A. Yes, sir; the same name. This particular department we have under discussion is the Master Department, the House Dress Department, and the one you have reference to, the Misses' Department, that comes within the House Dress Department of another floor.

Q. Let me understand you. Maybe I need your help even though you have spurned mine. A. Yes.

Q. You say this department in which you are assistant
3047 buyer comes within the House Dress Department? A. Yes, sir.

Q. And that before you were assistant buyer for the Misses' Machine-Made Dresses Department you were assistant for the House Dress Department? A. Yes, sir.

Q. Who was the buyer for the House Dress Department A. When I was assistant?

Q. Yes. A. Miss Kaplan.

Q. Who was the buyer when you were officially the assistant buyer for this particular department? A. Mr. Shields.

Q. Mr. Shields? A. Mr. Shields.

Q. Mr. Shields is the gentleman who has been sitting in the court room throughout our proceedings here, with
3048 you yesterday and to-day; is that the Mr. Shields? A. He is here.

Mr. Weisman: Will Mr. Shields stand up?

(A person stood up in the rear of the court room.)

Q. Is that the Mr. Shields you referred to? A. Yes, sir.

Q. Mr. Shields is your superior? A. No, sir.

Q. Where is Mr. Shields now? Is he promoted? A. Yes, sir.

Q. You were promoted to be the buyer? A. Yes, sir.

Q. In 1935 you stated that you had some trouble in placing your orders? A. Yes, sir.

Q. With the stamp on them? A. Yes, sir; with the stamp on them.

Q. That is; under this stamp you were not willing to buy copies? A. That is right.

Q. And the merchants who were making copies were not willing to sell you merchandise which might be returned? A. That is true.

Q. But this only existed for a little time? A. It seemed like a long time to me.

Q. I do not care how long it seemed to you. I say that facetiously, but, as a matter of fact, and, seriously speaking, it was about a month or two? A. It was longer. 3050

Q. It stopped in 1935? A. Yes, sir.

Q. Since then you do not want to give us the opinion, or the Court the opinion, then, that you have been unable to buy dresses from Lerner—not Lerner, but Loma? A. You mean Loma?

Q. Yes. A. No. I did not say so.

Q. We are not quarreling. I am just trying to clear up this matter. I grant that. You do not want to give us that idea, do you? A. No.

Q. You have been able to get merchandise from Loma; you can get the goods? A. What do you mean?

Q. They still sell you goods? A. They are selling me anything I want to buy now. They will sell me anything I want to buy. 3051

Q. That is fine; that is a situation that is very happy to you and your employer, you do not have any trouble in getting anything you want to buy from Loma? A. Or any manufacturers.

Q. Or any manufacturers at all? A. Yes, sir.

Q. The same thing is true as to Lombardy's? A. Yes, sir.

Q. You are not frightened by me? A. Certainly not.

Q. Then, why do you not speak up? A. I said, "yes, sir."

Q. I cannot hear you, my dear girl. Noxall Company, that was the name? A. Yes, sir.

Q. You do not have any trouble in getting merchandise from them; you buy what you want to buy? A. Yes, sir.

Q. Your store—as buyer, you went through the instruction school, did you not? A. No, I did not say that.

Q. What did you say? A. I said I was in the training school.

Q. In that training school they teach you how to conduct yourself as a minor executive of Filenes; is that it? A.
3053 We had instruction. I do not know just what you mean by your question. What do you want to know?

Q. I want to know, if you do not mind, about this school, or whatever you call it. Frankly, I am rather curious, for the sake of the record, to have, not personally, to find out just what sort of instruction you obtained at this instruction school from Filenes, but for the purpose of the record. A. Instruction not only in merchandising, in merchandising, in advertising, and whatever phase of the store one might be interested in entering.

Q. You know Filenes entered into some kind of arrangement with the Guild? A. Yes.

Q. And the sum and substance of this arrangement was that Filenes would not handle or purchase copies of originations that had been made up by members of the Guild?
3054 A. Knowingly.

Q. Knowingly. Yes. I mean that you would not do it knowingly. I agree with you there. If you did it knowingly, and it subsequently appeared that you had, you would seek to undo or right the wrong or breach that you had committed by acquiring such merchandise? A. Yes, sir.

Q. That is very simple, is it? A. Yes.

Q. You understand that, do you? A. Yes.

Q. Yes? A. Yes.

Q. As a minor executive of Filenes, since your employer had entered into that commitment you felt it your duty, I take it, to comply with the terms of that commitment; is that so? A. Yes, sir.

Q. In the exercise of that duty you sought wherever possible to refrain from knowingly purchasing copies of Guild originations for sale in your department; is that so? A. Yes, sir.

Q. What? A. Yes, sir.

Q. True? A. True.

Q. And thereafter if you found that you made a mistake 3056
because of lack of knowledge, I do not mean that you would knowingly break your promise, but if you should have bought a piece of merchandise which was subsequently found to be a copy of the Guild merchandise, in the exercise of your duties you would cause that to be returned? A. Yes, sir.

Q. On your direct examination you did say that at the same time you had trouble in getting certain numbers from Lombardy and Noxall? A. Yes, sir.

Q. Hot numbers? A. Yes, sir; and others.

Q. And then you said because you wanted to tell us the whole story, before I started to examine you, and you had not finished your answer, you did finish it, and the finish was, "However, since 1935 I did not have that trouble." 3057
A. I said, I believe I said that they would accept our orders.

Q. With the Guild stamp? A. Yes, sir.

Q. That had restricted them for a short period of time? A. I did not say I did buy from them.

Q. But that if you were willing to buy from them they would be glad to sell Filenes with the stamp on the order; is that it? A. Yes, sir.

Q. You are not worried about what anybody in the back thinks about what you are testifying here, are you? A. Oh, no.

Q. Would you try to listen to my questions? A. I am.

Q. Are you trying to look over at my shoulder to see how the people in the back think you are getting along in answering my questions? A. I am not. I cannot even see over your shoulder.

Q. I just wanted to make sure. I wanted to make sure about that. You need not worry. You are here as a witness sworn to tell the truth. A. I am.

Q. You were sworn as a witness, were you? A. I was.

3059 Q. I see. I was going to waive your taking the oath. I think you would tell the truth without it. A. Thank you.

Q. I think Mr. Haycraft asked you something and you did not answer it. He wanted to know from you, and we are only talking about dresses, what a "hot number" was. Do you remember that? A. Yes, sir.

Q. A "hot number" is a style that sells quickly; when we are talking of it in the dress business? A. Yes, sir.

Q. Is that so? A. Yes, sir.

Q. Very frequently does it not happen that the manufacturer will design or make up a fast selling number, copy one; is that so? A. There are some good fast selling numbers.

Q. That is what I mean. They go like this (counsel snaps his fingers quickly three times). That quick with
3060 the purchasing public; is that so? A. Yes, sir.

Q. That is true? A. Surely.

Q. When these numbers do receive what you and I call "consumer acceptation," you know what I mean by that term, do you? A. Yes, sir; I do.

Q. Yes? A. Yes.

Q. Then these houses like Lombardy's and Learners and Loma's, and Noxall or others, I do not mean any particu-

lar house, will copy them down into cheaper merchandise; is that so?

Mr. Haycraft: That is objected to.

Mr. Weisman: We are trying to find out what a "hot number" is.

Mr. Haycraft: That is a poor way to do it.

The Witness: I do not know.

Examiner Bennett: If she knows.

By Mr. Weisman.

Q. You know about hot numbers? A. I do not know anything about manufacturers.

Q. No? A. No. 3062

Mr. Haycraft: She was asked whether manufacturers copy them. How can she possibly know what manufacturers do.

Mr. Weisman: We will find out.

By Mr. Weisman.

Q. You do not know anything about manufacturers, you said? A. Correct.

Q. Or manufacturing right? A. Right.

Q. Do you know anything about copying? A. Whether the manufacturer copies or not—no.

Q. You do not know anything about those two things? A. No. 3063

Q. All you know about is what is what? A. I hope I know about buying dresses and trying to sell them.

Q. Do you mean that you can buy dresses to advantage in the operation of your department without knowing anything about the manufacturing of dresses or about copying? A. I think so.

Q. You do? A. Yes.

Q. Do you really mean that? A. Yes, I do.

Q. Sincerely? A. Sincerely.

Q. You said that, on your direct examination, that you could not get hold of "hot numbers"; do you remember saying that? A. Yes, sir; I do.

Q. When you said you could not get hold of "hot numbers," you mean "hot numbers" in the dress business; is that so? A. Yes.

Q. It is? A. Yes.

Q. When you told the Court that you were injured, in that you could not get hold of hot numbers, you knew what a hot number was, did you not know that? You had something in mind when you said "hot numbers"; is that so? A. Yes.

3065

Q. And you know just what that term meant; you knew that term meant something by that, did you? A. If I understand your question, I mean dresses that were forwards, that our competitors had that were fast-selling dresses and that happened to be copies and that I could not buy.

Q. You could not buy them because they were copies of higher-priced dresses; is that so? A. Yes, sir.

Q. That is the only trouble you really had? A. Yes, sir.

Q. And you and I—you and I can get along better if you will just look right straight at me.

Mr. Haycraft: Perhaps she does not want to look

3066 at you, Mr. Weisman.

A. I am looking right straight at you.

By Mr. Weisman.

Q. You just keep it up. I rather like it? A. You do? Well.

Q. That was your complaint on direct examination when you said you could not get "hot numbers"; is that so? A.

I mean that I could not carry numbers that were copies of Guild dresses.

Q. Yes. A. That my competitors might have.

Q. Might have because it was not their policy, as it was the policy of your store, to discourage copying; is that so; as you understood it; nobody is going to hold you to it.

Mr. Haycraft: That is objected to; as the policy of the store, she would not know that.

Mr. Weisman: I object to counsel prompting the witness.

Mr. Haycraft: It was established very clearly that this girl on the stand did not establish the policies of the store. 3068

Mr. Weisman: Nobody said she did. I am asking her what she knew.

Examiner Bennett: Overruled.

A. I do not know it, no.

By Mr. Weisman.

Q. Let us see whether you did or did not. You would not try to avoid an anwer by finding refuge in the statement that you did not know if you really knew? A. No, I really did not know the policy.

Q. Did you not know it was the policy of the store not to handle copies of Guild merchandise? A. With reservations. 3069

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: Proceed.

By Mr. Weisman.

Q. Then you knew it was the policy of the store not to handle copies of Guild merchandise, but you mean the reservation applies to the policy of the store and not to Guild merchandise; is that so? A. Yes, sir.

Q. Do you know what these reservations were? A. I have some opinion of them.

Q. Was that opinion created by what you heard Mr. Seegal testify to when you were sitting back there in the court room yesterday and to-day? A. No, I knew previously.

Q. What? A. No. I knew previously.

Q. You knew previously, so then it now develops you did know the policy of the store?

Mr. Haycraft: She said she had an opinion.

The Witness: I said I had an opinion.

Mr. Weisman: Now, look, brother, do not prompt
3071 the witness and put the very answer in the witness' mouth. This is an honest witness and a bright witness and she does not need any prompting.

Mr. Haycraft: I am not going to have you misquote the previous testimony of the witness. That is unfair.

Mr. Weisman: You know I am not misquoting anything. I do not think it is proper to put the very words into the witness' mouth, an answer to the question.

Mr. Haycraft: I did not do that.

Mr. Weisman: We will have the question and answer read and see.

Read the two previous answers of the witness.

3072 (Record read.)

Mr. Weisman: I think that is sufficient.

Examiner Bennett: Proceed, gentlemen.

Mr. Weisman: If you want to put the answer in the witness' mouth, why, I do not know what I can do about it, apparently. The reporter has read the answer and I think it is perfectly clear from that. Right before you said something and after you said

something I think that it shows just what happened. I just want to show that so that we can keep it straight on the record.

Mr. Haycraft: I am trying to keep you from putting error in your questions to the witness.

Examiner Bennett: Read the question and proceed.

(Question read.)

A. I said I had an opinion.

Mr. Weisman: Why, we are just wasting time on that.

Examiner Bennett: Off the record. 3074

(There was a discussion off the record.)

Examiner Bennett: Proceed.

By Mr. Weisman.

Q. Now, it does appear, then, Miss Kimball, that you did know the policy of your store with regard to copies?

Mr. Haycraft: I object to that question. She has not said she knew the policy of the store. I object to the form of the question.

Mr. Weisman: I withdraw the question. I do not want to argue over this girl. I want to get the facts.

By Mr. Weisman. 3075

Q. Did you know the policy of your store with regard to handling copied merchandise? A. I said I had some opinion.

Mr. Haycraft: I object to the question and move the answer be stricken.

Examiner Bennett: Overruled.

By Mr. Weisman.

Q. When you said you did not know before, you were in error? A. There is a difference from having an opinion and knowing.

Q. I am trying to find out and I, in an effort to find out, will ask you to tell me what is the difference between your knowing and my question. Can you say what is the difference between those two things? What is the difference? Will you answer me, then? What did you see over there that might help you answer the question? A. I was not looking at anybody.

Q. I asked you whether you knew it and you told me
3077 you had an opinion on it; is that so. You said there is a difference. When did you get the opinion that you had, and where? Where did you get this opinion that you had concerning the store's policy? A. Through some of my superiors.

Q. From some of your superiors? A. Yes, sir.

Q. From which of your superiors? A. I do not remember.

Q. Who was your superior? A. My boss?

Q. Who was your immediate superior? A. Mr. Shields.

Q. Mr. Shields? A. Mr. Shields.

Q. Did you get your opinion from anything he said to you? A. Perhaps. I said superiors. I may have formed my opinion from him and a few others.

3078 Q. Who are the few others? A. I do not remember.

Q. You do not remember? A. No.

Q. And you said "a few others." Give me one other that you may have gotten your opinion from? A. I do not know.

Q. You do not know? A. No.

Q. Can you remember what they might have said that gave you an opinion on that? A. No, I do not.

Q. Can you remember what your opinion was? A. I do not have to remember. I can give you my opinion of what our policy was.

Q. I want to know, now, whether or not you always had the same opinion, or whether listening to Mr. Seegal's testimony changed your opinion in any regard? A. My opinion of the agreement was——

Q. No, no, no. I do not want that yet. We will come to that gradually. A. Yes.

Q. What I want to know is whether or not you always had the same opinion as you now have concerning your store's policy? A. As far as I am concerned, yes.

Q. Yes? A. As far as my particular department is 3080
concerned.

Q. I see. A. Yes.

Q. Then, so you had the same opinion of your store's policy with regard to copies in August, 1933, as you have now? A. I do not know the exact date.

Q. About that? A. Yes.

Q. Your opinion has remained constant and fixed? A. Yes.

Q. It has been the same opinion? A. Yes.

Q. All the way from 1933? A. Yes.

Q. To 1936, the early part of March, 1936? A. Yes.

Q. Is that correct? A. Yes.

Q. Tell us what your opinion as to your story policy with regard to handling copies of merchandise is which 3081
was originally designed by members of the Fashion Originators Guild of America, Inc.? A. To return the merchandise that was adjudged a copy of Guild merchandise unless we obtained permission to carry it in such cases as our competitive stores would have it.

Q. Now, if you can——

Mr. Weisman: May I ask something off the record?

Examiner Bennett: Off the record. I want to ask the witness something myself.

(There was a discussion off the record.)

Examiner Bennett: Back on the record. It appears that it is not possible to finish the cross-examination of this witness until a late hour to-night, and that there is yet another witness, or perhaps more to follow.

This witness is now temporarily excused and I will ask this witness to reappear for further cross-examination to-morrow morning at 9 o'clock, Eastern Standard Time, in this court room.

(Witness excused.)

3083

We will, at this time, take an adjournment until to-morrow morning at 9 o'clock A. M., Eastern Standard Time.

(Whereupon, at 5 o'clock P. M., July 28, 1936, the hearing was adjourned.)

Court Room No. 5, Federal Building,
Boston, Mass., July 29, 1936.

Met, pursuant to adjournment, 8.30 A. M.

Before: JOHN W. BENNETT, Examiner.

3084

APPEARANCES:

R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

MILTON C. WEISMAN, Esq., GEORGE FELDMAN, Esq., and HERBERT S. KELLER, Esq., appearing for the Fashion Originators Guild of America, Inc.

PROCEEDINGS.

Examiner Bennett: Gentlemen, since everyone is here, and the desire has been expressed by both counsel and acquiesced in by all interested parties to start one-half hour early, I will grant that request.

You may proceed.

MATHILDE KIMBALL resumed the stand and testified further as follows:

Cross-examination (resumed) by Mr. Weisman. 3086

Q. Miss Kimball, in your testimony yesterday I understood you to say that with regard to these three manufacturers who, up to 1935, you could not get merchandise with the stamp on in your orders, you subsequently could get—and you found that they would take the orders that you would give them if you found their merchandise satisfactory? A. Yes.

Q. I also find on your testimony that you said that they refused to take you orders from 1934 to 1935? A. Yes.

Q. I want you to try to refresh your recollection, if you can, and say whether or not this condition which you referred to existed not in 1934 but for a few months in 1935? A. Yes.

Q. That is correct? A. Yes. 3087

Q. In other words, your statement yesterday that you could not get them to take your orders with the warranty stamp on it during the years 1934 and 1935 was an honest mistake by you in the course of your testimony. What really was the fact was that for a short time in 1935 they would take them? A. I believe I said in 1935 the manufacturers, but I gave you an all-inclusive date when we did have difficulty—an all-inclusive date was not very specific—I said I did not know the exact date.

Q. Let me call your attention to this, and I know if you have made an honest mistake, and there is no harm, we all do it. A. We all do that, yes.

Q. There is nothing wrong about that. A. No.

Q. I will call your attention to it so that you may correct it. Let me see where that is. A. I can give you the correct date if you want it now.

Q. You say that you can give me the correct date if I want it now? A. Yes.

Q. You mean by that that you have discussed this with somebody overnight? A. No. I looked up some of my returns.

3089 Q. Do you mean, now—look, now, I am not talking about returns. A. No?

Q. Let me clear up your mind. A. I understand what you mean, but I am just telling you that I did look up some of my records after getting out of here last night.

Q. Yes. A. Because I admitted I did not know the exact date.

Q. Then, the only time that you had trouble in placing your orders with the stamp on them was for about a month or two in 1935? A. Yes.

Q. Is that so? A. Yes.

Q. And if your testimony yesterday was to the effect that you had considerable trouble in 1934 and 1935 that was an honest mistake on your part that you believed when you said it, and upon a more mature consideration and

3090 upon examination you now find yourself in error, and that you now want to correct? A. Yes.

Q. Is that so? A. I said 1935 and not 1934.

Q. If you said 1935 there would not be any error. Let me read what you said so when I seek to correct you you will see I am frank about it. A. Yes.

Q. I will just show it to you. A. All right.

Q. This question was asked you at page 1561: "Q. When was it they declined to take your orders with that stamp

on them? A. I do not know the date, but I know that I could not do any buying—whenever—right from the start whenever I used the stamp. By Examiner Bennett: Q. What year? A. 1934. Q. Any other year? A. I would say inclusive, like 1933 to 1935." Now, that is what I would call your attention to. A. I do not think those answers refer to those three manufacturers. In that answer I was referring to my entire buying. But I would restrict it within the period. That is what I was doing there, I was restricting it within that period.

Q. You mean—let me see, you mean when you answered the Court that during that period you would not buy copies of Guild merchandise? A. Yes.

3092

Q. Yes? A. Yes.

Mr. Weisman: Is that perfectly plain to your Honor?

Examiner Bennett: I am listening to you.

Mr. Weisman: I said, is it perfectly plain?

By Mr. Weisman.

Q. You do not mean that during that period you had trouble placing the orders with the manufacturers? A. No.

Q. As to that you only had such trouble as you may have had during a short period, which was approximately thirty days in 1935; is that correct? A. I do not know how many days.

3093

Q. A short period. A. But it was in the late fall of 1935.

Q. A short period? A. Yes.

Q. Subsequently, between the expiration of that short period that trouble resolved itself and disappeared so that now you can give your orders if you are kind enough, or if you think their merchandise is such that you want to have it; is that so?

Mr. Martin: I object to it as incompetent, irrelevant, and not a part of the direct examination.

Mr. Weisman: I do not think it calls for a reply, your Honor.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: I will let her answer.

The Witness: What is the question?

(Question again read.)

By Mr. Weisman.

Q. The Court said you may answer. A. Now—by now
3095 you mean the present time?

Q. Present and since the latter part of 1935. A. I think very obviously, yes. I think that is most obvious.

Q. You say your answer is "obviously, yes"? A. Yes.

Q. Obviously, yes? A. Yes.

Q. Yes? A. True.

Q. Now, I also understood you to say that you were in this department during 1933, your present dress department? A. Yes.

Q. There is nothing tricky about these questions; don't be troubled. You know whether you were there. A. Well.

Q. I understood you to say that you were official assistant buyer; do you remember that? A. Yes.

Q. I remember yesterday in answer to my question you stressed the word—that you were "official assistant buyer."
3096 A. Yes.

Q. When you said "officially assistant buyer" you did not mean that while you were officially assistant buyer you performed duties somewhere else; do you? A. No.

Q. You mean that you performed duties in your department? A. Yes.

Q. May I say, and am I fair or correct when I am about to infer by that, by your use of that word "officially assistant buyer," that you mean us to understand that in truth

and in fact you really acted as buyer while you only had the title, officially assistant buyer; is that so? You keep using the word "officially." A. I was not the buyer, I did not do all of the buying, but I did do some of the buying.

Q. You knew what was going on in the department? A. Yes. That is, I cannot say that I knew every single thing that went on in the department.

Q. You wish now to differentiate between your testimony and Mr. Seegal's yesterday, when he said he knew what was going on in somebody else's mind; is that it?

Mr. Martin: I object.

Mr. Weisman: Well, I was just trying to make it plain to the witness. 3098

Examiner Bennett: Sustained.

Mr. Weisman: I will withdraw the question.

By Mr. Weisman.

Q. What was going on you knew about that where it was in connection with your duties? A. Well, I think there is a distinction there.

Q. Yes? A. I knew what was humanly possible to know. I cannot say I knew everything. There was a superior and I had a clerical and I had a stockkeeper.

Q. But generally you knew, did you not? A. I think so.

Q. Of course, you probably did? A. Yes.

Q. You did not sleep? A. Oh, no.

Q. You knew what price merchandise was being handled 3099 there, did you? A. Yes.

Q. In 1933 what price merchandise was being handled in that department, in your department? A. Well, I cannot say definitely the price lines, I can give you the general lines.

Q. That is what we want from you, my dear girl. A. $3.75, $4.75, and I cannot say whether we carried any $5's or not; I do not know which one we were paying; whether

we were all the up or going down: in other words, whether we changed our price lines because sometimes we traded down and sometimes we traded up.

By Examiner Bennett.

Q. Wholesale price? A. Yes, sir.

Q. What was the retail price? A. That is primarily the $6.95 to $5.95 to $7.95 and some $8.95.

By Mr. Weisman.

Q. What was your lowest price in that department in 1933, if you remember? A. I cannot give you an answer
3101 to that exactly.

Q. I do not want the exact answer. Would you say it was $3.75? A. I would—I cannot give you a definite price. I feel quite certain we had some at $3.75.

Q. Yes. It is not very important. A. I want to be sure of that.

Q. What? A. I want to be sure I see that. And I thank you, and I am certain of it.

Q. Yes. A. I do.

Q. And you yesterday testified that you also had $4.75. There is no question about that, is there? A. No. You are talking about two years, now?

Q. No. I am talking about 1933. A. Yes. Yesterday I said our department—this department in question was
3102 primarily a $4.75 department. That is where we do our volume.

Q. That is where you do your volume? A. That is where we do our volume.

Q. When you say that is where you do your volume, what do you mean? A. In that department.

Q. I am speaking of that department, my dear girl. A. Yes.

Q. When you say you do your volume in that department, in the $4.75 line, you do not want us to understand that you did not handle some $4—some $5.75? A. No, I do not.

Q. No? A. No.

Q. And also when you say that it is a fact that you also handled $5.75 dresses? A. Yes.

Q. Wholesale price? A. Yes.

Q. And also $6.75? A. No.

Q. No? A. No.

Q. All right. Just from $3.75 to $5.75? A. Yes.

Q. True? A. Yes.

Q. This was true also in 1933? A. I cannot say. 3104

Q. What is your best opinion? A. Well——

Q. You have been there for eight years. Surely you know something about what went on in the department? A. I was not in this department eight years.

Q. You certainly know when you testified what went on in this department which you were in for five years or four years. A. Not in this particular branch.

Q. Where were you? A. I was in the House Dress Department before.

Q. How long were you in this department? A. This one?

Q. Yes. A. Well——

Q. Can you tell us that? A. I cannot give you the exact priced line because we change from season to season. 3105

Q. I did not ask you that. I said how long have you been in this department? A. I have answered you that before.

Q. Please answer it again for me because I do not seem to understand what you claim—how long you claim to have been in this department. Have you answered it? A. From 1933.

Q. From 1933? A. From 1933.

Q. That is what I am trying to find out. A moment ago you said you were not in this department in 1934? A. No, I did not say so.

Q. Then you were in this department in 1934? A. I did not say I was not—I did not say I was in the department in 1934.

Q. Well, we will start all over again. We seem to be traveling around in circles. A. Not me.

Q. Where were you in 1933? A. What do you mean?

Q. Were you, according to your best recollection and knowledge of the entire situation and of what you were doing in this department in 1933? A. Yes.

3107 Q. That is your testimony? A. Yes.

Q. You were in this department in 1933? A. Yes.

Q. And you were in this department in 1934? A. Yes.

Q. And you were in this department in 1935? A. Yes.

Q. And you are now in this department and have been during 1936? A. Yes.

Q. Now, you also were—I withdraw that— At the present time, and for the year 1936, the bulk of your volume of sales in this department is done in the $4.75 wholesale price range; is that so? A. I do not have the actual figures of each price line. I cannot give them to you.

By Mr. Weisman.

3108 Q. I did not ask you for the actual figures. I said, from your experience and knowledge of the department, can you tell me whether or not in this year the bulk of your business is done in merchandise which costs you at wholesale $4.75? A. I cannot give you the exact figures to-day.

Q. I did not ask you for the exact figures. I want your knowledge of this department. I want to know from you in what wholesale price range is the bulk of your business

done in this department; in what wholesale price range is the bulk of your business in this department done? A. I would say $4.75.

Q. All right. Why did you not say that the first time and save me asking the question three times? A. Well.

Q. Was that likewise true in 1935? A. No.

Q. In 1935 in what price range would you say that the bulk of your business was done? A. At $3.75 and $5.75.

Q. Now, in 1934, was the bulk of your business done in merchandise that costs wholesale $3.75 and $5.75? A. No.

Q. "No"; is that your answer? A. Yes.

Q. No? A. Yes.

Q. Speak up so we can hear you. In 1934 in what wholesale price range was the bulk of your business—the bulk of the business of this department done? A. $4.75. 3110

Q. $4.75? A. $4.75.

Q. In 1933 in what wholesale price range was the bulk of the business of this department done? A. I cannot say definitely. I would say offhand $4.75.

Q. $4.75? A. Yes.

Q. So that we have it as follows: "In 1933 and in 1934 and in 1936 the bulk of the business done in this department was done in garments which cost wholesale $4.75, while in 1935 the bulk of the business was done in garments which cost at wholesale $3.75 and $5.75." A. Yes.

Q. That is correct? A. Yes.

Q. I also understand that in 1933 you, pursuant to the orders of your superiors, commenced to affix to all of your orders the warranty stamp; is that so? A. I do not know the exact date. 3111

Q. I did not ask you for the exact date. You testified yesterday it was about August, 1933, and that is the date when the agreement was made between the Filenes, or the declaration of co-operation was entered into; is that so? A. Yes.

Q. In 1933, from the time of the commencement, you continued to put all of the—to put that stamp on all of the orders; is that correct? A. I presume that somebody did. I do not know the date, Mr. Weisman.

Q. Assuming some time in 1933, I do not want the exact date, but the latter part when you commenced to operate. A. It had no bearing on my department in that year, no particular bearing.

Q. I did not ask you that. I asked you— A. I did not put the stamp on. I am not in a position to tell you.

Q. Who did put the stamp on? A. Our merchandising office.

3113 Q. Did you ever see these orders? A. I did not see the orders, necessarily, after they are sent upstairs.

Q. You do not want us to understand, do you, that Wm. Filenes Sons Company after they entered into this declaration of co-operation which said that they would put their stamp on there, did not put it on? A. I made no such intimation.

Q. Do you not know, as a matter of fact, that when Wm. Filenes Sons said that they were going to put the stamp on, from that point on they did put it on? A. I know that the stamp was on.

Q. Yes. A. I do not know the date when it went on.

Q. I am simply trying to fix the date that the stamp was on. A. I did not understand your question.

3114 Q. All right. During the year 1934—now, we are through with 1933—that stamp was put on the orders, was it? A. I presume so. I do not know.

Q. Well, let me see—do you know whether or not you are putting the stamp on now? A. Thank you. I certainly do. I certainly do know we do not have the stamp on.

Q. You certainly do know that you do not have the stamp on now? A. Yes, I certainly do know we do not have the stamp on now.

Q. How do you "certainly know" that; do not look at him. He does not know any more than you. A. I am not looking at him. I just looked at him a moment ago.

Q. Well, you were. That minute you were. A. Well, I just looked that way.

Q. I want to make this clear. I mean that Mr. Martin does not know any more about this transaction than you do, excuse me. I do not know that he does not know more about other things, of course. You said, "I certainly know that we are not putting the stamp on now"; I want to know how you "certainly know" that.

Mr. Martin: I object to it as incompetent, immaterial and irrelevant for any purpose whatsoever. 3116

The Witness: I think the answer is very obvious.

Mr. Martin: I think as to whether or not she knows as to whether or not the stamp was put on or not is immaterial for any purpose whatsoever.

Mr. Weisman: I think this is quite material. I am trying to bring some of these things in backwards because this is on cross-examination. We are on the cross-examination of this witness and we certainly have a right to do that.

By Mr. Weisman.

Q. Tell me——

Mr. Martin: I object. I ask for a ruling. 3117

Examiner Bennett: I am going to let her answer.

By Mr. Weisman.

Q. Now, you know that you are not using the stamp now, do you not? A. We are no longer—we have no longer any agreement with the F.O.G.A.

Q. How do you know that? Do not look at him. A. I have been informed from my superiors that we no longer have any agreement with the F.O.G.A.

Q. And that means the Fashion Originators Guild of America, Inc.? A. Yes.

Q. When were you informed by your superiors to that effect? A. February—some time in the middle of February or around the first week of the—well, I would say around the week of the 13th.

Q. Who informed you? A. Our merchandise man.

Q. Do not be so coy; tell us his name. A. Mr. Gross.

Q. Mr. Gross told you in or about the middle of February that it was no longer necessary for you to affix the stamp to your orders; is that so? A. That we were no longer—that no longer did we have an agreement with
3119 the Fashion Originators Guild of America, Inc.

Q. You know the name pretty well? A. I should.

Q. And therefore, what? A. I assumed that we no longer have the Guild stamp.

Q. And since February you have not used the Guild stamp, the middle of February? A. Yes.

Q. Yes? A. True.

Q. Since you have not used the Guild stamp, have you felt free to purchase copies of Guild merchandise? A. I have bought merchandise with never thinking about whether they were copies or not.

Q. You did not care? A. I—yes.

Q. Is that—but that is only since you learned that your store was no longer co-operating with the Guild? A. Yes, sir.

3120 Q. Prior to that time, which was prior to February of this year, about the middle of February, you said wherever possible—no, you said in every instance you sought to refrain from buying copies of Guild merchandise; is that true? A. Knowingly.

Q. Yes? A. Knowingly, we never did.

Q. If you bought that unknowingly and you subsequently became aware of the fact that they were copies

of Guild merchandise, you sent them back to the manufacturers; is that so? A. Whenever they were adjudged to be a copy.

Q. Yes. A. And I was ordered to return them, I did.

Q. In other words, you never returned them until they were adjudged copies? A. True.

Q. Correct? A. Yes.

Q. It was necessary, then, before a garment was returned, that it should be first adjudged a copy, you stated? A. That it was—that I be—that we be proved that it was a copy.

Q. In other words, if there was proved to you, to your satisfaction, that it was a Guild copy, or that it had been 3122
adjudged to be a Guild copy by a competent person, then you would cause it to be returned; is that so? A. And, may I add——

Q. Yes, if you first answer "yes" or "no" and then you can give me a full answer. A. I cannot answer that "yes" or "no."

Q. Answer it just as best you can; go on and tell me. A. By "adjudged it to be a copy, and proved to be," I mean that we were given proof that that dress was a copy of a Fashion Originators Guild member's dress.

Q. Yes. A. And we returned it. Not that I personally had to be proven that it was a copy.

Q. I understand. In other words, if it had been duly adjudged by somebody competent, and you received evidence 3123
of that adjudication, then and then only would you return it? A. Yes, sir.

Q. That is correct? A. Yes.

Q. Now, that was the procedure that you followed, did you, in February, 1936—that is to say, up until the middle of February, 1936? A. Yes, sir.

Q. That was the procedure you followed in 1935? A. Yes, but it was not very much——

Q. And that was the procedure that you followed in 1934 and 1933? A. If there was a need for it.

Q. You testified yesterday that you knew Miss Brady, did you? A. Yes.

Q. How long have you known Miss Brady? A. Ever since she was a representative for the Fashion Originators Guild of America, Inc.

Q. Well, that was some time in the early part of 1934, was it? A. I would say in 1935. I do not know the date.

Q. All right. A. I do not know exactly.

Q. That was since the early part, or some part of 1934, would you say? A. I would say part of, or the latter part
3125 of 1935.

Q. 1935. Latter part. How did you meet her? She came into the store and introduced herself to you, or did one of your superiors bring her in to you and introduce her to you? A. I do not recall.

Q. You do not recall? A. No.

Q. And— A. I think she just came in and announced herself.

Q. To you? A. Yes.

Q. Thereafter, she came in from time to time? A. Yes.

Q. When she came in she came in on this business of copies; is that so? A. Yes.

Q. When she would come in she would usually ask for you, as the representative of your department, would she not; she would not discuss that with your "cleries," as
3126 you said, would she? A. Yes, sometimes.

Q. Of course, but when you were around would she discuss this with you, would she not? A. Not always.

Q. Not always? A. No.

Q. If you were there she would discuss it with you rather than with your inferiors or subordinates? A. Sometimes with the floor superintendent.

Q. Is the floor superintendent your superior or your subordinate? A. She is under an entirely different

pyramid in our store. She has nothing directly to do with the merchandising.

Q. When she would come in and she would, if she would speak to you she would tell you in words or in substance that a certain dress that you had in this department had been adjudged a copy; is that right? A. No, not that it had been adjudged a copy, but that it was a copy.

Q. But that it was a copy? A. Yes.

Q. Well, you said before that you would not take any action until you had received reasonable proof that it had been adjudged a copy, so then I take it after she told you this you would then ask for her proof? A. Yes.

Q. You would ask her for that? A. Yes. 3128

Q. Then she would submit her proof to you? A. Yes.

Q. Is that right? A. Yes.

Q. If the proof satisfied you that, as a reasonable person, that a dress was, in fact, a copy, you would send it back? A. Yes.

Q. You would? A. Yes.

Q. That was the customary procedure that Miss Brady followed; is that so? A. Yes.

Q. Now, sometimes stores would have copies of merchandise of which you were carrying the original; is that so? A. Yes.

Q. I mean, this was a two-way street? A. Yes.

Q. It was? A. Yes.

Q. You were being protected by this policy, and by "you," I mean Filenes from other stores carrying copies 3129
of your merchandise, as you were protecting them from your carrying copies of their original merchandise; is that so? A. Yes.

Q. Now, when you found that a competitor had a copy of a number that you had in stock, would you notify Miss Brady? A. I am not qualified to answer that question because I did not handle any of the higher-priced merchan-

dise, so I would not know whether anybody else had copies of our higher-priced merchandise.

Examiner Bennett: Call her attention to that particular item.

By Mr. Weisman.

Q. Let me ask you this question, Miss Kimball: You were in charge of this department in the early part of 1934? A. Yes.

Q. And as that person in charge of this department you were interested in making the best possible showing with regard to sales? A. Yes.

3131 Q. If somebody had a copy of your dress which you were carrying at $4.75 and somebody had a copy of it at $3.75, would you call that to the attention of your superior? A. No, here was no need for it; $4.75 never went into the Guild that I know of.

Q. That is not what I asked you. You really do not know whether they were or not members of the Guild? A. Well, I guess you are right about that. I never knew of it.

Q. I think you said you did on your testimony yesterday. A. Did I?

Q. I am asking you now, if you found a copy of the lesser priced dress, what would you do about it?

3132 Mr. Martin: I object as calling for an opinion. There is no evidence that she ever found any copy.

Mr. Weisman: I will withdraw the question in that particular form in order to satisfy counsel. You see, I am willing to co-operate.

By Mr. Weisman.

Q. Well, you know—do you not know that Filenes, from time to time, communicated with the Guild and requested

the Guild to cause the removal of copies from sale by competitors? A. I know what you are driving at, but you are not putting it the right way so that I can answer it.

Q. You know what I am driving at by my question but I am not putting it in a way that you can answer it; is that what you mean? A. You mean, if other stores have any particular copy of any kind, I had to return whether we called it to their attention or not?

Q. No. I see now that you did not understand my question at all. I will try to make it clearer to you. What I want to know from you is whether or not you know that if Filenes, as a store, learned that some other store was carrying a copy of an original that Filenes had in stock, 3134 that Filenes would ask the Guild to use its offices to have that returned? A. I do not know.

Q. You never knew of it? A. No.

Q. That was never called to your attention at any time? A. No, because it was not necessary to me. It was not a matter which would be of interest to me.

Q. If it was not called to your attention, the reason makes no difference. You did not know about it? A. No.

Q. How often would Miss Brady come in to see you, if you know; once a week, once a month, or what? A. I would say at least once a day.

Q. Once a day? A. Once a day, at least.

Q. And when she came in, you knew what she came in for? A. Yes, sir.

3135

Q. After a while, from this constant association with her, your became reasonably acquainted with her and as one person to another, a reasonable friendship existed between you and her? A. Yes.

Mr. Martin: I object to that as incompetent, immaterial and irrelevant. What possible bearing can it have?

Examiner Bennett: Sustained.

Mr. Weisman: Exception. I offer to prove that if the witness were permitted to answer, the answer would have been in the affirmative.

By Mr. Weisman.

Q. You knew of it every time she came into the store; is that true? A. Yes, sir.

Q. She came into the store openly—I mean, she did not come in through the back entrance, for instance, or anything of that kind, did she? A. No.

Q. Well, you knew her each time she came into the store? A. Yes.

3137 Q. She came into the store openly? I mean, she did not come in through back entrances, or anything of that kind, did she? A. (Witness shakes head negatively.)

Q. I cannot hear you. A. No.

Mr. Weisman: Her lips form the word "No."

By Mr. Weisman.

Q. And you understood that she was coming into the store, did you not——

Mr. Martin: Objected to.

Mr. Weisman: Well, I did not finish——

Mr. Martin: Well——

3138 *By Mr. Weisman.*

Q. ——with the knowledge and acquiescence of your superiors? A. Yes.

Mr. Martin: I——

Mr. Weisman: That is all.

Examiner Bennett: Any redirect?

Mr. Martin: No redirect, your Honor.

Examiner Bennett: Thank you very much; you are excused.

(Witness excused.)

Mr. Martin: I call Miss Goldstein, your Honor.

ANNA GOLDSTEIN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Examiner Bennett: What is your name?

The Witness: Anna Goldstein.

Direct examination by Mr. Martin.

Q. Now, Miss Goldstein, will you please state your full name and your address? A. Anna Goldstein, 19 Allston Street, Brookline, Mass.

Q. Now, what is your occupation, Miss Goldstein? A. Divisional merchandise manager, ready-to-wear and intimate apparel, with the R. H. White Company.

Mr. Weisman: May I have the answer?

(Answer read.)

By Mr. Martin.

Q. Now, what business is R. H. White Company engaged in, Miss Goldstein? A. Department store.

Q. Where is its place of business? A. On Washington Street.

Q. Do they operate more than one store? A. Just the one on Washington Street, and then we have a Cambridge store.

Q. Now, with reference to your main store on Washington Street, what type of merchandise does R. H. White

Company handle? A. Merchandise in the nature of soft and hard—that is usually termed soft and hard articles.

Q. Well, will you please explain that?

Mr. Weisman: Oh, can we not get right down to the dress department and save a little time? We are not interested in the hard articles; we want to come to the soft ones.

By Mr. Martin.

Q. Will you please explain your answer for me, Miss Goldstein? I am not familiar with the technical terms of the trade. A. Hard, as I understand it, meaning furnishings, everything pertaining to the home, and soft, accessories, wearing apparel, in the nature of that merchandise.

3143

Q. Does your store carry a full line of ladies' garments? A. Yes.

Q. Now, as divisional manager of the ready-to-wear and intimate apparel departments, what are your duties, Miss Goldstein? A. To guide and co-ordinate the responsibilities of the buyers that work with me.

Q. Do your duties include any buying on your part? A. No.

Q. Do you have anything at all to do with the buying of ladies' dresses? A. No.

Q. Does your store have any such classification or designation of employees as merchandise managers, for ladies' dresses? A. No.

3144

Q. Do you have more than one department with relation to ladies' and misses' dresses and garments? A. We have, yes.

Q. Will you name them? A. Women's and misses' inexpensive dresses, misses' better dresses, women's better dresses.

Q. So that your women's and misses' dresses are divided into three grand divisions; is that correct? A. Yes.

Q. Now, who is in charge of the buying for those three divisions? A. Mr. Leon Mandelson, buyer for the misses' and women's inexpensive; Miss Morse, buyer of the misses' better; Miss Starratt, buyer of the women's better.

Q. Now, are these three buyers, Mr. Mandelson, Miss Morse, and Miss Starratt, under your supervision as divisional merchandise manager? A. Yes.

Q. What contact do you have with them with reference to their performance of their duties as buyers? A. They report to me.

Q. Do these buyers have anything to do with the selling 3146
in their respective departments, and, if so, just what do they have to do with it? A. I will have to qualify that. A buyer's job is truly a selling job, selling what they buy through their sales force, so they in turn can sell it to the customers. That is all the selling they do.

Q. Are you in charge, or have supervision of the selling in these departments as well as in the buying? A. No.

Q. Now, in the regular course and conduct of the business and in the performance of your duties as divisional merchandise manager, do you, from time to time, make periodic checks of the departments under your supervision in order to determine the trend of sales?

Mr. Weisman: May I have the question read? I was interrupted. 3147

(Question read.)

Mr. Weisman: Objected to as incompetent, irrelevant and immaterial, and not in proper form.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. I do.

Q. Now, Miss Goldstein, have you ever heard of an organization called the Fashion Originators Guild of America, Inc.? A. Yes.

Q. Where did you first hear of it? A. In '33.

Q. Do you know what part of 1933? Can you be more specific? A. The latter part.

Q. The latter part of 1933. Now, from the time you first heard of the Fashion Originators Guild of America in the latter part of 1933, down to and including April, 1936, did you, and when I say you I refer to the R. H. White Company, in any way co-operate with the Fashion Originators Guild in its activities? A. I wonder if I can
3149 inject the following—I have been in the employ of R. H. White's only for the last year and a half. I joined them in January, '35.

Mr. Weisman: That is quite all right. May we get the question, then?

Mr. Martin: Since.

Mr. Weisman: Limit it.

Mr. Martin: Limit it——

Mr. Weisman: To the period that the young lady was employed.

By Mr. Martin.

Q. From the time you became connected with R. H. White Company, in what part of 1933 was it? A. Janu-
3150 ary, the last part of January, '35.

Q. Down to April, 1936, has your store, to you knowledge, in any way co-operated with the Fashion Originators Guild of America in its activities? A. We were red carded in February, therefore we could not co-operate through '36.

Q. I said at any time. You misunderstood me.

Mr. Weisman: May I have the answer stricken out now that the witness understands it?

Examiner Bennett: Yes, it may be stricken.

By Mr. Martin.

Q. Did you at any time during that period, including January, 1935, down to April of this year, at any time during that period did your store co-operate with the Guild? A. Yes.

Q. Now, in what way did your store co-operate with them? A. According to the by-laws laid down with reservations——

3152

Mr. Weisman: No, no. May I—we want to know what, by that question, what your store did, not according to this or that.

Mr. Martin: Yes.

Mr. Weisman: Yes, what you did.

By Mr. Martin.

Q. Just tell what your store did to co-operate with the Guild. Did you ever sign any statement, to your knowledge, disclosing to the Guild your intention to co-operate with them? A. I don't know.

Q. Well, now, can you testify, of your own knowledge, what your store did during the time that you have been with them, and up to April, 1936? Just what they did do to co-operate with the Guild; that is, if you know? A. We placed the warranty stamp on orders pertaining to ready-to-wear, such as dresses, coats——

3153

Mr. Martin: Have you got that Exhibit 306?

Mr. Weisman: Well, we will stipulate instead of wasting time looking for it. The warranty stamp is the Commission's Exhibit 306. We all know about it, Judge.

Mr. Martin: That is agreeable to counsel.

Examiner Bennett: All right.

By Mr. Martin.

Q. Now, what happened when you placed this warranty stamp, which it is stipulated was used on orders which were placed by the R. H. White Company?

Examiner Bennett: I will ask the witness if the buyers reported to her their activities in behalf of the concern which employed them.

The Witness: Yes.

3155 Examiner Bennett: In what detail did they report?

The Witness: Rather detailed, full, as full as I could gather to my knowledge.

Examiner Bennett: So you had knowledge of what they were doing?

The Witness: Yes.

Examiner Bennett: And it was received in the ordinary course of business, was it?

The Witness: Yes.

Examiner Bennett: I think she is qualified to answer that question.

Mr. Martin: Now, if you will read the question.

(Question read as follows: "Now, what happened when you placed this warranty stamp, which it is
3156 stipulated was used on orders which were placed by the R. H. White Company?")

Mr. Weisman: May it please your Honor, I respectfully except to your Honor's ruling. I do not want to be unduly prolonging this, but I think that that question should be limited to some time. Obviously, something might happen in one case.

Examiner Bennett: Well, I think that that——

Mr. Weisman: I don't know——

Examiner Bennett: I think that is a fair suggestion. I wish you would make it more specific as to time, Mr. Martin.

By Mr. Martin.

Q. Limiting your answer to the fall of 1935, what happened when you placed these warranty stamps on your merchandise orders?

Mr. Weisman: If anything.

Examiner Bennett: Well, that may be incorporated in the question.

A. The clause was specific in itself as evidenced by the 3158
terminology used, which embarrassed us in instances to the degree that manufacturers did not ship merchandise to us; that our competitors were in position to receive, because they did not use the same warranty clause on their orders, as well as those that did use it.

By Mr. Martin.

Q. Now, Miss Goldstein, in co-operating with the Guild in its activities, at any time between the time of your employment, January, 1935, to April, 1936, did you return any garments? A. Yes.

Q. To manufacturers? A. Yes.

Q. To your knowledge, does the Fashion Originators Guild of America employ a shopper in Boston? A. Yes. 3159

Q. Do you know her name? A. Miss Brady.

Q. Have you ever met her, or do you know her personally? A. Yes.

Q. Have you ever met her in performance of her duties in Whites Store? A. Yes.

Q. What was she doing? A. She would come up to my office and submit for my attention, in instances where she

could not locate the buyer, subjects of merchandise claimed to be the originals of which she found copies in our stocks.

Q. In what department were her activities confined? A. In all dress departments in our store.

Q. That is the three ones— A. In the three departments.

Q. The women's and misses' inexpensive dresses, the misses' better dresses, and the women's better dresses? A. Yes.

By Mr. Martin.

Q. Did Miss Brady ever request you to return any
3161 dresses to the manufacturers? A. Yes.

Q. What were the reasons for her request? A. Copies.

Q. Now, can you testify as to the number of garments, of the number of instances in which garments were returned to the manufacturer pursuant to the request of Miss Brady?

Mr. Weisman: Objected to. The witness has not testified that garments were ever returned pursuant to her request. She has testified that Miss Brady has requested the return and she has testified——

Mr. Martin: Well, now, I will ask a further question if you want me to do it.

Examiner Bennett: He is just asking her about that merchandise.

3162 Mr. Weisman: I do not think it is a proper question to ask.

Examiner Bennett: All right, object to it.

Mr. Weisman: And it leaves an inference that the dresses were returned, or requested, when the fact is they were only returned if they were found to be adjudged copies. That is the vice of it; and furthermore, in view of the stipulation which, of course, we are all equally bound by, I do not see the sudden insistence upon this form of question.

Mr. Martin: No sudden insistence.

Mr. Weisman: It has been stipulated in this case that the dresses that were returned were copies, and it is immaterial whether or not, in fact, or in truth, they were copies—that the question is whether or not this and——

Mr. Martin: I am not asking that. I am asking the number of instances.

Examiner Bennett: The objection is overruled; answer the question.

The Witness: May I have the question?

(Last question read.)

3164

By Mr. Martin.

Q. Answer it "yes" or "no." Can you testify? A. Yes.

Q. Will you please do so. A. May I refer to my memorandum?

Q. Certainly. A. (Witness refers to paper.) Eighty-two units.

Q By "units," you mean— A. Pieces.

Q. Dresses, pieces? A. Pieces.

Q. Can you give the dates and the occasions of these returns? A. August 23, '35.

Q. Just a moment.

Mr. Martin: May I read this off and save time (referring to the paper produced by the witness)?

Mr. Weisman: No objection. 3165

By Mr. Martin.

Q. I ask you if you can identify this (referring to paper produced by the witness)?

Mr. Weisman: I will stipulate this; we want to save time; we will put this right in evidence.

Mr. Martin: It is stipulated that a list headed "Dresses returned at the request of F.O.G.A." be admitted into evidence as Commission's—the next number.

Mr. Weisman: Except that it is also understood that the fact it is received merely for the purpose of showing the number of dresses and the time received, and no proof of the fact that they were returned solely at the request of the F.O.G.A.

Mr. Martin: No, I am not going to limit it to that—she——

Mr. Weisman: Well, she has not testified yet
3167 that any dresses were returned solely at our request.

Mr. Martin: Oh——

Mr. Weisman: And, as a matter of fact, there isn't any sense in trying to get her to say so, because I am sure that on cross-examination she will tell us the whole story.

(List of dresses returned at the request of the F.O.G.A. was marked for identification Commission's Exhibit 360.)

By Mr. Martin.

Q. Were these dresses which you have testified were returned, were they returned at the request of Miss Brady, and for that reason only? A. Yes.

3168 Q. Now, I ask you, can you identify this paper as a list of dresses returned at the request of the F.O.G.A. by the R. H. White Store? A. Yes.

Mr. Martin: I offer this in evidence, your Honor, as Commission's Exhibit 360.

Examiner Bennett: It may be marked, and it is received as Commission's Exhibit 360.

(The list referred to, heretofore marked for identification Commission's Exhibit 360, was marked as an exhibit and received in evidence.)

By Mr. Martin.

Q. Do you recall when the R. H. White Store was red carded? A. Yes.

Q. Now, what was the first knowledge which you had of the fact that R. H. White & Company had been red carded?

Mr. Weisman: Objected to as immaterial as to her particular knowledge. The knowedge is not important. It is the facts leading up to the matter which might be important. 3170

Mr. Martin: I think the question is highly proper.

Mr. Weisman: Objected to as irrelevant.

Mr. Martin: And it does not need any argument by me as to the defense of it.

Examiner Bennett: I will overrule the objection.

Mr. Weisman: Exception.

A. Through the medium of "Women's Wear."

By Mr. Martin.

Q. Will you explain that just a little bit further? A. "Women's Wear" is a daily record used by the trade. First, to my knowledge, that we were red carded—about the fact that R. H. White were red carded—came to me through reading this in the "Women's Wear." 3171

Q. To your knowledge, did the Fashion Originators Guild in any way notify R. H. White & Company by mail, telegram, or telephone, that they had been red carded? A. I don't know.

Q. Now, what did R. H. White & Company do after they had received notice of being red carded, if they did anything? A. We sent Miss Mosse, our buyer of Better Misses' Dresses, into the market to buy merchandise, because we needed it, and she was turned down, refused to have merchandise shown to her by the members of the F.O.G.A.

Q. Were any of your other buyers denied access to the manufacturers who were members of the Fashion Originators Guild? A. Miss Starratt, who was sent to market at a later date because she then found it necessary to replenish her stock, experienced the same reception.

3173 Q. Can you testify as to the names of manufacturers who were members of the Guild, and from whom you had purchased, prior to the time of being red carded, women's and misses' dresses? A. May I refresh my memory?

Q. You can answer that "yes" or "no." A. Yes.

Q. Have you a list that you can refer to? A. Yes.

Q. Let me see it.

(Witness produces list and hands to counsel.)

Q. Will you name those manufacturers? A. Milton Altmark, Inc., Aywon Dress Company, Inc., Casino Dresses, Inc., Cecele Dance Frocks, Daytime Frocks, F. E. D. Dress Company, A. Goodman & Company, International Dress Company, Marie-Lynn Dance Frocks, Phil Zahn & Company, Radiant Dress Company, Rosen Brothers Frocks, Sheila-Lynn Dresses, Frank Starr Friedlander, Witlin & Schneider, E. N. Marcus & Company of Boston.

3174

The previous were all New York offices in New York. I did not name all. Do you want me to name them all?

Q. Name them all. A. It will take a lot of time.

Mr. Martin: Are you willing to let it be copied into the record?

Mr. Weisman: Let it be copied into the record.

Mr. Martin: Your Honor please, it is stipulated that this list may be copied, that this was the list—

Mr. Weisman: No, that was not the list. I said let the reporter copy all these names into the record.

Mr. Martin: That is what I say.

Mr. Weisman: With the same force as if the witness had testified to them.

Mr. Martin: That is what I want to get.

Mr. Weisman: All right.

Mr. Martin: It is stipulated between counsel that that was agreed upon. 3176

Examiner Bennett: Have you stipulated that that list shall go in as——

Mr. Weisman: Not the list itself. There are a lot of names. The Reporter will copy them off and they will be her answer to this question.

Examiner Bennett: Yes. You are offering that as Commission's Exhibit 361?

Mr. Weisman: No, it is not an exhibit, Judge.

Examiner Bennett: I beg your pardon?

Mr. Weisman: It is not an exhibit; it is testimony.

Examiner Bennett: Oh, I see.

Mr. Weisman: Instead of reading all these names, she has looked at the card, and she has read it, and the Reporter will copy off the names 3177 as if she had said them, and save us the trouble of repeating the names.

All right, Miss——

Examiner Bennett: All right, if the Reporter will copy them off right now.

(The names copied into the record by the Reporter are as follows:

Milton Altmark, Inc.,
Aywon Dress Company, Inc.,
Bon Ray Dan Frocks, Inc.,
Casino Dresses, Inc.,
Cecele Dance Frocks, Inc.,
Cohen-Tunick, Inc.,
Daytime Frocks, Inc.,
F. E. D. Dress Company,
Harry Frank,
A. Goodman & Company, Inc.,
3179 Julius Grossman & Fred Greenberg,
International Dress Company, Inc.,
Lee Claire Costumes, Inc.,
Marie-Lynn Dance Frocks, Inc.,
Phil Zahn & Company, Inc.,
Radiant Dress Company,
C. H. D. Robbins Company,
Rosen Brothers Frocks, Inc.,
Sheila-Lynn Dresses, Inc.,
Frank Starr-Friedlander, Inc.,
Stern & Goldberg, Inc.,
Witlin & Schneider,
Lydle Brothers,
E. N. Marcus & Company, Boston.)

3180 Examiner Bennett: Now, is it your testimony that this card contains the list of the members of the respondents with whom you did business?

The Witness: Yes.

Examiner Bennett: Very well.

By Mr. Martin.

Q. Can you recall, Miss Goldstein, the names of the manufacturers who denied access to your salesmen? Answer "Yes" or "No"? A. Yes.

Q. Will you give the names of the manufacturers and your salesmen to whom they denied access? A. (Witness refers to paper.) Milton Altmark, Aywon Dress Company, Goldstein & Anton, Bretter & Sussman, Witlin & Schneider, Lila Modes, Marie-Lynn Dance Frocks, Dolces Dress Company, C. H. D. Robbins Company, Rosen Brothers Frocks, E. N. Marcus & Company, Boston, Franklin Dress Company, of Chicago.

Examiner Bennett: Now, the rest of the answer?

By Mr. Martin.

Q. Now, what buyers did those manufacturers fail to give access to? A. The misses' dress houses were approached by Miss Morse, the buyer of misses' better dresses. The women's dress manufacturers to Miss Starratt, the buyer of women's better dresses. 3182

Q. Now, Miss Goldstein, with reference to the type of garments, dresses, handled by your firm, do you know what is the usual or customary time which elapses between the placing of the order and the delivery of the goods pursuant to that order? Do you know that time? A. Yes.

Q. What is it? A. Depending upon price line merchandise, in the lower inexpensive price lines, immediate delivery, such as $4.75, $6.75, up to $8.75.

Q. Now, above that? A. Above that, anywheres from one week to three weeks, depending upon the time of the year. 3183

By Mr. Martin.

Q. Now, Miss Goldstein, at the time that R. H. White Company were red carded, were there outstanding with manufacturers who were members of the Fashion Originators Guild any unfilled orders? A. Yes.

Q. Were they filled? A. No.

Q. In the ordinary conduct of the business, do you know whether or not your store made any attempts to place re orders after you were red carded? A. Yes.

Q. Did you make any attempts? A. Yes.

Q. Were the orders filled? A. No.

By Mr. Martin.

Q. When you made these attempts to re-order, were the re-orders accepted by the Guild manufacturers? A. No.

Q. Since the time you were red carded, have you been able to buy any garments from manufacturers who were members of the Fashion Originators Guild and with whom
3185 you had been doing business prior to the time of red carding? A. No.

Q. When was the last time you tried to place an order with one of the manufacturers who were members of that Fashion Originators Guild and with whom you had done business prior to being red carded? A. The latter part of February.

Q. Of what year? A. 1936.

Q. Now, the garments that you bought from manufacturers who were members of the Fashion Originators Guild, prior to being red carded, were in what price ranges? A. In the main $10.75, cost up to $16.75.

Q. The bulk of those dresses were at what price? A. $10.75 and $12.75.

3186 Q. To the best of your knowledge, Miss Goldstein, how long had the Guild membership included manufacturers in the brackets below $10.75?

Mr. Weisman: Objected to as incompetent, immaterial and irrelevant. What has her knowledge got to do with it? The testimony that is in the case is your direct case, when he subpoenaed the Guild, and we put all our membership in.

Mr. Martin: That is a foundation question.

Mr. Weisman: I don't care. It seems to me, your Honor, that is a new plan of procedure here. Whenever a new question is asked, the examiner-attorney has recourse to the statement that it is a foundation question. Obviously, it cannot be a foundation for anything, and an incompetent question cannot be made competent by being denominated a foundation question.

What is the difference—let us have the question again. Your Honor will see it is wholly incompetent, immaterial and irrelevant. She certainly is not an expert on the Guild. Our roster is in evi- 3188
dence, our by-laws are in evidence, the declaration of co-operation is in evidence, and I submit it can serve no good purpose to permit such questions to be in the record, and I respectfully object and ask that the question be excluded.

Examiner Bennett: I will ask the examining attorney to reframe his question, if he wants it as a foundation question, and to make such assumption as he—that is, if he has the date—I assume you have the date?

By Mr. Martin.

Q. Miss Goldstein, I—— (Handing paper to counsel.)

Mr. Weisman: Do you want to offer that in evi- 3189
dence?

Mr. Martin: Yes.

Mr. Weisman: I have no objection.

By Mr. Martin.

Q. I ask you if you can identify that as a copy of a letter received by you from the Fashion Originators Guild under date of November 7, 1935? Can you identify that?

A. Yes.

Mr. Martin: I offer this in evidence, your Honor, please, as Commission's Exhibit 361.

Examiner Bennett: 361-A and 361-B.

Mr. Martin: It is all one letter, your Honor, consisting of two pages.

Examiner Bennett: Two pages. Any objection?

Mr. Weisman: No, your Honor.

Examiner Bennett: Received.

(Letter from Albert M. Post, Executive Director, Fashion Originators Guild of America, Inc., 512 Seventh Avenue, New York City, under date of November 7, 1935, to Miss Anna Goldstein, R. H.
3191 White & Company, Boston, Mass., was marked Commission's Exhibits 361-A and 361-B, and received in evidence.)

Mr. Weisman: We have no objection, subject to this statement; we believe—we may be mistaken about this—that this letter is already in evidence and has another exhibit number, but it would not make any difference if it goes in again. We find that it is——

Mr. Post: I am not sure about that.

Mr. Martin: It does not appear to be a form letter. It is addressed to her.

Mr. Weisman: Well, it was——

Mr. Martin: I mean her——

3192 Mr. Weisman: It is mimeographed, and the name is merely put in.

By Mr. Martin.

Q. Now, will you refer to Commission's Exhibits 361-A and B, and tell us when you were first notified that the Fashion Originators Guild of America included manufacturers in the brackets under $10.75?

Mr. Weisman: I submit, your Honor, the letter is dated, and she testified that they received it, and the letter is the best evidence of what it says, and when it is dated.

Mr. Martin: I have not asked her what it said, Mr. Weisman. I asked her when she got it.

Examiner Bennett: Overruled; go ahead.

Mr. Weisman: Exception.

By Mr. Martin.

Q. Answer the question. A. The early part of the fall of '36, it came to my knowledge.

Q. The fall? 3194

Examiner Bennett: Of 1936?

The Witness: Of '35. It came to my knowledge that the $6.75, $7.75 and $8.75 dress lines were included under the Protected Affiliated Fashion Originators Guild of America.

Mr. Weisman: May I see it?

Mr. Martin: Surely (handing paper to counsel).

By Mr. Martin.

Q. Now, prior to that time, was the lowest priced dress which you bought from F.O.G.A. manufacturers in the $10.75 bracket? A. Yes.

Q. Now, these dresses which you have referred to that you bought from manufacturers who were members of the Fashion Originators Guild of America, were they sold in all of the departments you have referred to, or were they limited? A. I would like to ask a question if I may? I am not clear. 3195

Q. You may. A. Does that include $6.75, and is the inclusion of the $6.75?

Q. I included—you have testified that you bought dresses from manufacturers who were members of the

Fashion Originators Guild. Now, I want to know in what departments did you sell the dresses which you bought from Fashion Originators Guild members? Did you sell them in all departments or were they limited to any special department? A. They were included in two departments, namely, the misses' better and the women's better.

Q. Now, Miss Goldstein, in the ordinary course of your business have you made a study of the business of R. H. White & Company with relation to the various dress departments to determine what effect upon those dress departments your inability to buy from manufacturers who
3197 are members of the Guild has had? You can answer that "yes" or "no."

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant whether she has made such a study or not. We have no means of asking her what the study was on cross-examination in connection therewith. It is not the subject matter of any particular fact, but is a conclusion of this witness.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

By Mr. Martin.

Q. You may answer that question "yes" or "no." A.
3198 Yes, I have.

Q. What study did you make, Miss Goldstein? A. We have in existence what is known as a "unit control system" for our principal price lines which we maintain for yearly, monthly, weekly comparison. In comparing the unit sales results per price line for this year and last year I have arrived at a conclusion which enables me to make a statement.

Q. You have testified that you have made a study? A. Yes, sir.

Q. Now I ask you, from this study what is your conclusion as to the effect of the inability to get Fashion Originators Guild members' dresses or garments on the business of R. H. White & Company? A. In the price lines entailed, which our store for the year 1935 compared with the first five months of 1936, our sales decreased in this particular --in those particular price lines down 16.6 per cent.

Mr. Weisman: I object.

Mr. Martin: I object until the witness has completed the answer to any interruption.

Examiner Bennett: She is giving her answer. Please do not interrupt until she completes.

Mr. Weisman: I thought she had completed it. 3200

Examiner Bennett: No.

By Mr. Martin.

Q. Finish your answer. A. What was my answer to this point, please?

(Answer read by the reporter.)

A. —16.6 per cent. of the price lines entailed in F.O.G.A. merchandise through the store not being able to buy them on the open market.

By Mr. Weisman.

Q. Are you finished? A. Yes. 3201

Q. You are sure? A. Yes.

Mr. Weisman: I ask that the answer be stricken out as not responsive to the question.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

By Mr. Martin.

Q. Prior to the early fall of 1935, Miss Goldstein, did your store buy lower-priced garments from manufacturers who were not members of the Guild? A. Yes.

Q. Do you know when you, and by "you" I refer to R. H. White & Company, first started to use the Guild stamp on orders placed by you? A. No, sir.

Q. Can you testify as to when R. H. White & Company was first called upon to make returns of garments under the plan of co-operation? A. No, sir.

Q. Since your connection with the store R. H. White & Company, which began in January, 1935, and up to and
3203 including the time when the store was red carded, did R. H. White & Company restrict its buying policy; that is, did it endeavor not to buy copies of designs which were registered with the Fashion Originators Guild of America, Inc.?

Mr. Weisman: I would like to make this comment off the record.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: On the record.

Mr. Martin: Change that question, Mr. Reporter, and make it "copies" instead of——

Mr. Weisman (interposing): "Copies of original designs of Fashion Originators Guild of America,
3204 Inc.'s manufacturers." I have no objection to the answer to that.

The Witness: What is the question?

(The question was read as above set forth.)

The Witness: I do not understand the question.

By Mr. Martin.

Q. Since your connection with the store of R. H. White & Company, which began in January, 1935, and up until

l including the time when the store was red carded, did H. White & Company restrict its buying policy; that did it endeavor not to buy copies of or restrict its purases so that it did not buy copies of original styles manctured by members of the Fashion Originators Guild of erica, Inc.? A. Yes, sir.

Q. Now, Miss Goldstein, can you name any manufacers who refused to accept orders which had the Guild mp placed on them?

Mr. Weisman: If she knows to begin with.

Mr. Martin.

Q. Yes, or no. A. Yes. 3206

Q. Will you name them? A. Noxall and Feinberg and eisen. That is all.

Mr. Martin: That is all I have for this witness.

Examiner Bennett: You may cross-examine.

oss-examination by Mr. Weisman.

Q. In answer to certain questions of Mr. Martin you ted that you made a study of the effect of your inability get Guild merchandise; is that correct? A. Yes.

Q. Yes? A. Yes.

Q. You have then—I withdraw that—where did you conct this study? A. In the course of my business day.

Q. I did not say when, I asked you where it would be. 3207 at would be where? A. That would be in the store.

Q. In the course of your business day and in the store? Yes, sir.

Q. Now, you are the divisional merchandise manager of men's ready-to-wear and for the intimate apparel; is t so? A. Yes.

Q. True? A. Yes.

Q. As such, you have stated that you are in control of the buyers who directly buy for the departments? A. Yes, sir.

Q. And now this question: Was the truth of your conclusions on those circumstances important? A. What is that?

Q. The truth of your conclusions was rather important to you in the performance of your duties; was it? A. Yes.

Q. In some degree, and to the same degree in fact it is equally important here, you believe, do you not? A. Yes, sir,

Q. Have you at any time been informed that it is impo-
3209 tant to Filenes, which in the parent company of R. H. White & Company, the company by which you are employed, that it appear that the damage or injury was large?

Mr. Martin: I object to that as improper cross-examination. There is no testimony that this witness gave that there is any connection between William Filenes & Sons Company and R. H. White & Company.

Mr. Weisman: Mr. Seegal testified to that.

Mr. Martin: You are cross-examining this witness and this witness has made no such statement on her examination.

Mr. Weisman: I am not cross-examining her on that fact. I am cross-examining her and using that
3210 in my cross-examination as to whether or not anyone told her that this was important; that is the point of the cross-examination. I am not asking her to deny that R. H. White & Company is a subsidiary of Wm. Filenes Sons Company. We have that in the record by Mr. Seegal. I am using it in an effort to determine the credibility of this witness and to show her bias, knowledge, and general background so that we may be able to determine with some

degree of certainty the probative value, weight, faith and credit which may be given to her testimony.

Examiner Bennett: I will sustain the objection. I think it is not—whether or not it is important to Filenes I think is not important to us.

Mr. Weisman: I am going to the credibility of the witness, your Honor.

Examiner Bennett: Go ahead.

Mr. Weisman: I except to your Honor's ruling.

Examiner Bennett: You have your exception.

By Mr. Weisman.

Q. Do you know that R. H. White & Company is a wholly-owned subsidiary of Filenes? 3212

Mr. Martin: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Do you know who Mr. Seegal is, who testified in this case?

Mr. Martin: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman. 3213

Q. Who is the president of R. H. White & Company?

Mr. Martin: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Do you know whether or not the president of R. H. White & Company is also the director of Filenes, a director of that company, I mean?

Mr. Martin: I object.
Examiner Bennett: Sustained.
Mr. Weisman: Exception.

By Mr. Weisman.

Q. Do you know whether or not R. H. White & Company joined with Filenes in a suit that was brought by Filenes against the Fashion Originators Guild of America, Inc.?

Mr. Martin: I object.
Examiner Bennett: Sustained.
Mr. Weisman: Exception.

3215 *By Mr. Weisman.*

Q. Did anyone ever tell you that it was important to R. H. White & Company that it appear that the dress department was doing badly?

Mr. Martin: I object, that is wholly incompetent, immaterial and irrelevant.
Examiner Bennett: I will sustain the objection.
Mr. Martin: Thank you.
Mr. Weisman: Exception.

By Mr. Weisman.

Q. When did you first come to this court room?

3216 Mr. Martin: I object to that as incompetent, immaterial and irrelevant to the issues of this case when she came here, if she came here a month ago or a year ago.

Examiner Bennett: What are you going to try to prove by that?

Mr. Weisman: I am going to prove that this witness sat here throughout this entire hearing; that she sat here in the company of Mr. Rayfield; that

she listened to prior witnesses; that her testimony is influenced by what she saw and heard in this hearing and by the testimony of others and furthermore by her desire to make the situation appear in a light which will be most favorable to R. H. White & Company, and to Wm. Filenes Sons Company in its personal and direct conflict with the Guild; that she is a biased and interested witness and that many of her statements have been prompted by what she has been told to testify to; I want to show who her superiors are and what their connection is with others and what their interest is, so that we may determine how much she has been influenced by the 3218
fact of her employment, and the fact of her employers' connection with others and their connection with the respondent herein. It seems to me inescapable and that this is all of vital importance to the Commission in getting the true picture here.

Examiner Bennett: Well, of course, that question, how long she has been there, would not cover that, but—I will let her answer that. I think anything that shows light on possible bias will be competent and proper.

Mr. Weisman: That is all I want to show here.

By Mr. Weisman.

Q. How long have you been in the court room? A. Since 3219
I have been "soapened" (subpoenaed) to appear.

Q. You say "soapened"? A. Yes, sir.

Q. You would not come if you were not subpoenaed? A. No, I would not.

Mr. Martin: I object.

Examiner Bennett: Overruled.

By Mr. Weisman.

Q. You mean that you have no interest in this case and you would not come if you were not subpoenaed, is that right? A. No, I was "soapened" (subpoenaed).

Q. I asked you would you not have come if you were not subpoenaed and you said "no," is that the truth? A. I came because I was "soapened" (subpoenaed).

Q. That is not my question. After that I asked you if you would come if you were subpoenaed—if you were not subpoenaed, and you said "no"? A. I do not remember saying anything of that kind.

3221 Mr. Weisman: I will ask the Reporter to read that question and let us see how much of a memory you have in regard to that.

(The question and answer referred to were read as follows: "Q. You would not come if you were not subpoenaed? "A. No, I would not.")

By Mr. Weisman.

Q. Did you hear that?

Mr. Martin: I object to that as wholly immaterial, incompetent and irrelevant for any purpose.

Mr. Weisman: Here is a witness testifying to her memory of a lot of things that buyers allegedly told her and I want to find out, and I want it to
3222 appear in the record that a question and answer that was made by her not more than two or three seconds ago, now she says she did not remember making at all. I want that to appear in the record as showing that either she is untruthful, or her memory is entitled to no credence, it is so unreliable.

Mr. Martin: I object to that and ask that it be stricken out.

Mr. Weisman: I insist that it stay in the record because that will be made a part of my argument to the Commission as to the type of witnesses we are meeting here.

Examiner Bennett: Have you any reply to make to that?

Mr. Martin: Whether it will be in the record is not for you to say, but for the Examiner to say. I think you are improperly usurping the position of the Examiner.

Mr. Weisman: I did not attempt to do so. I was simply asking the Examiner to leave it in and I was stating to the Examiner the reasons that I wanted 3224
it in, but I want to say that I do not desire to usurp his position as you seem to do. I want to show here in your Honor's very presence, what type of a witness we have, either untruthful, or with a memory so unreliable as to negative entirely her testimony.

Examiner Bennett: It is in the record so far as your failure to get answers concerning certain questions. I will strike out the argument.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Now, that the Reporter has read that question and answer to you, do you remember having said to me that you would not come if you were not subpoenaed? 3225

Mr. Martin: I object to that as being incompetent, immaterial and irrelevant.

Mr. Weisman: I submit it is proper cross-examination.

Examiner Bennett: All right. I will let her answer.

By Mr. Weisman.

Q. Now, do you remember it? A. I do.

Q. When you made that answer, was that a truthful answer? A. Which answer are you referring to?

Q. Now, would you not have come if you had not been subpoenaed? A. No—I do not understand your question.

Q. Would you have come if you had not been subpoenaed? A. Yes.

Q. In other words, we have it now that if the Federal Trade Commission had not subpoenaed you to come here and testify you would not have come voluntarily, is that right?

3227 Mr. Martin: I object to this, if your Honor please, the question of whether this witness would or would not have come here unless she had been subpoenaed is entirely and wholly and completely irrelevant to the issues herein involved and I see no purpose in asking a question of that kind.

Examiner Bennett: I will sustain an objection to that.

Mr. Weisman: Exception.

Examiner Bennett: Now proceed.

Mr. Weisman: May it please your honor, here is a witness who says she is an executive in charge of a——

3228 Examiner Bennett (interposing): There is no need of arguing. I have already passed on that. There is no use of these post-mortems, these post-mortem examinations. You have your exceptions. You can make that argument before the Commission.

Mr. Weisman: I shall do so at the proper time. I except to your Honor denying me the right to present my reasons for pressing the question.

Examiner Bennett: All right. Proceed. Exception granted.

By Mr. Weisman.

Q. You testified, if I recall correctly, that if the Guild program—that you thought the Guild program had harmed your business. Did you say that? A. Yes.

Q. And do you not know that this proceeding is for the purpose of stopping that program? A. I do not.

Q. What do you think this proceeding is for?

Mr. Martin: I object, your Honor. What she thinks this proceeding is for has nothing to do with the issues involved.

Mr. Weisman: I take it that the witness is seemingly an intelligent executive of this department store and comes here and tells us calmly that she does not know the purposes of this proceeding which has been in every trade paper in the United States devoted to this industry, I do not have to be bound by that answer and I submit I am entitled to probe her to see if she is in fact telling the truth about this matter. 3230

Mr. Martin: This witness was summoned here as a witness on behalf of the Commission. She has, as such, been asked certain questions and is now on cross-examination by Mr. Weisman as to those questions. As to the question of what her knowledge is as to what this case is about, it has no reference to the issues in this case.

Mr. Weisman: Except to tell us whether she is telling us the truth or not. That is always a perfectly proper examination on cross-examination to test the veracity of the witness, her interest, her bias, and anything that might color her testimony one way or the other. 3231

Examiner Bennett: Nevertheless, I think I shall sustain the objection.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Tell me this, then; are you interested in seeing that this Guild program is stopped?

Mr. Martin: The same objection.

Examiner Bennett: Overruled. She may answer.

The Witness: May I have the question?

Q. (Question read.) A. I do not know.

By Mr. Weisman.

Q. You do not know what? A. I have not formed a
3233 conclusion.

Q. Did you not say that it hurt your business? A. Yes, sir.

Q. Are you interested in seeing that anything that hurts your business is stopped? A. I have not considered that.

Q. Well, now that I call it to your attention, what do you think about it? A. I do not know.

Q. Is it part of your duties to see that those things which injure your business, or wherever it is within your possibility to do so, are removed by you? A. Yes.

Mr. Martin: There has been no evidence here that it is within her possibility to remove those objections, or conditions.

Mr. Weisman: It does not make any difference.

3234 Examiner Bennett: Overruled. You may answer.

By Mr. Weisman.

Q. The Court says you may answer.

The Witness: What is the question?

Q. (Question read.) A. With limitations.

Q. Are not your duties to do those things which will foster and advance the interest of your dress department; is that part of your duties? A. With limitations.

Q. Yes, of course, with limitations, we do not expect you to do the impossible. A. No.

Q. If it is true that the Guild program has injured your business, and you have made a study of the injury, and you have come to a certain conclusion, how is it that you do not want this program stopped? A. I am only a co-worker in the organization and have limited power.

Q. Do you have personal feelings, have you? A. I have not defined them.

Q. I did not ask you whether you had defined them; I asked you whether you had them. 3236

Mr. Martin: I object.

Examiner Bennett: I think she did not, I am subject to correction, as I remember she did not testify that she did not wish the activities of the Guild stopped.

Mr. Weisman: Let us see what she did. I think she did.

Examiner Bennett: I do not think so.

Mr. Weisman: Well, we can clear that up very readily.

By Mr. Weisman.

Q. Do you want the Guild's activities to continue? A. I have to refer to my superior. 3237

Q. Please stop looking back there to see whether they approve or disapprove of your testimony. Just watch me.

Mr. Martin: I object.

Mr. Weisman: What do you want to do? You want to set up a signal system?

Mr. Martin: Certainly not.

By Mr. Weisman.

Q. I want to know what you want; your superiors do not appear here; your superiors did not see fit to testify in this case although he did in the other case, but he has struck you up in this case for some reason.

Mr. Martin: I object.

By Mr. Weisman.

Q. He has put you on the witness stand to testify and he is sitting back in the court room there, very interesting, very interesting.

3239 Mr. Martin: I object.

By Mr. Weisman.

Q. I want to know what you feel about it.

Examiner Bennett: Objection sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Who is your superior? A. Our president.

Q. Oh, do not hide the name, tell us who it is. A. Mr. Raphael.

Q. What is the full name? A. Mr. B. F. Raphael, as I know it.

3240 Q. Mr. B. F. Raphael was in court all the time you were in court, was he not?

Mr. Martin: I object to that as incompetent and immaterial, who was in court.

Examiner Bennett: I will let her answer.

By Mr. Weisman.

Q. Answer the question. A. What is the question?

Q. (Question read.) A. Yes.

Q. He sat alongside of you? A. Not all of the time.
Q. Most of the time? A. Part of the time.
Q. I did not say all of the time, did I? A. No.
Q. No. A. No.
Q. You went out from the court with him? A. And others.
Q. And others? A. And others.
Q. And you discussed your testimony with him and others? A. No.
Q. With him? A. No.
Q. With others? A. No.
Q. Do you want this court to believe that during all of the time since you were subpoenaed until to-day you never discussed with Mr. Raphael the subject matter of your testimony; is that correct? 3242

Mr. Martin: If your Honor please, I think that question entirely improper. She has not given any testimony or had not at the time that Mr. Weisman is referring to.

By Mr. Weisman.

Q. Testimony that you were to give or that you would give in this case.

The Witness: Am I to answer this and, if so, what is the question?

(Question read as amended.)

Examiner Bennett: Pay attention to that question very carefully. I call your attention to "subject matter." 3243

A. Yes.

By Mr. Weisman.

Q. What do you mean by this? You did discuss this with him? What do you mean by the work "yes," was that

that you did not discuss it with him? A. "Yes" means "yes."

Q. Well, I will agree with you, my dear girl, when you say "yes" means "yes"; do you mean by "yes" you did discuss it with him? A. That is not the question.

Q. I am asking you this question, now, did your "yes" to the previous question mean "yes," you did discuss the subject matter," or "yes, you did not discuss the subject matter with Mr. Raphael," the subject matter of the testimony that you were going to give? A. I discussed with Mr. Raphael my knowledge of what I knew pertaining to my functions in the store and my activities.

3245 Q. Did you discuss with him the effect of the Guild policy upon the business of the R. H. White & Company? A. Not in detail.

Q. I did not ask you whether you did it in detail or whether you did it at large; I want to know whether you did it at all. A. In conversations.

Q. All right. When was the conversation that you had with him on that subject? A. I do not recall.

Q. Well, what is your best recollection? A. To the best recollection, in the course of conversation, some time Monday.

Q. Where did that conversation take place?

Mr. Martin: If your Honor please, I cannot see the relevancy of the location of the conversation.

3246 Mr. Weisman: This is a foundation question. I am just laying a foundation.

Mr. Martin: If your Honor please, I am going to ask Mr. Weisman the same thing that he asked me before, "What are you laying a foundation for?"

Mr. Weisman: The Court ruled that you did not have to tell me, and I do not have to tell it for this witness, this witness is no fool, she is a very smart woman, and I am not going to disclose it so that she can guide her testimony.

Mr. Martin: I do not think it is at all material or relevant as to the issues in this case.

Mr. Weisman: It will become very apparent as I draw it out.

Mr. Martin: I think we are just wasting time on this proposition, Mr. Examiner, and I object.

Examiner Bennett: It is nothing new, wasting time, but we will go ahead and let her answer.

The Witness: What is the question?

Q. (Question read.) A. I do not recall.

By Mr. Weisman. 3248

Q. In other words, you cannot recall where a conversation with Mr. Raphael that happened Monday, you cannot recall where it took place? A. That is right.

Q. Do you remember whether anybody else but Mr. Raphael was present when that conversation was had? A. No.

Q. You know you are under oath here? A. Yes.

Q. You know what an oath means? A. Yes.

Q. And you cannot remember that? A. No.

Q. Generally, how is your memory?

Mr. Martin: I object.

Mr. Weisman: That is always proper on cross-examination, surely, Mr. Examiner, to go into the memory of the witness. The witness may be able to 3249
tell us that she has lapses in her memory either natural or induced, or what not.

Examiner Bennett: I will sustain the objection to it just the same. I think her memory should be shown by answers to questions, but not that question.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Do you believe that you suffer from a lack of ordinary memory?

Mr. Martin: I object.
Examiner Bennett; Sustained.
Mr. Weisman: Exception.

By Mr. Weisman.

Q. Now, your testified that you made a study and this study consisted of an examination, by you, of your reports showing the total volume done in this department in 1936
3251 and the volume done for the corresponding period in 1936. A. In units.

Q. In units. Did you do it in dollars and cents? A. Interpreted by units into volume.

Q. Did you get your total volume for 1936; is that right? A. That is right.

Q. Now, what months did you do it for? A. For a five months' period.

Q. For a five months' period? A. Yes.

Q. Commencing when? A. February.

Q. Ending in? A. June.

Q. Commencing February and ending in June, 1936? A. Yes.

Q. And this study of those months consisted of comparing the total volume during those five months' period with
3252 the total volume during the same period in 1935? A. Of the price lines embodying dresses which formerly we had available from resources with members of the Guild.

Q. What you did do was not to take the total volume done in the dress department, but you picked out certain dresses and said, "Those are the dresses we are going to compare what we did this year with what we did last year"; is that so? A. No, not dresses but price lines. Price lines that were influenced by Guild members' sources of supply.

Q. So that is what you did. Now, let us see just a moment; this is rather interesting, my dear young lady. It was the volume that you did in your women's and misses' inexpensive dresses department in those five months—what was that volume? A. What was what?

Q. What was the volume that you did in your women's and misses' inexpensive dresses department in those five months? A. I do not know whether I could quote dollars, I can quote it in percentage, as I quoted in my testimony.

Q. Have you records? A. Oh, yes.

Q. You have records and you did not quote the percentage of what you did in that department, you quoted the percentage as to what you did as to certain dresses that 3254
were purchased by you at certain prices. What I am trying to find out from you is what you did during these competitive, or, rather, these comparative periods, I believe you use them for comparative purposes, in the respective departments; is that entirely plain to you—I am asking you simply is that entirely plain to you?

Mr. Martin: I object to the question.

Mr. Weisman: The question is, "Is that entirely plain to you?" Are you objecting as to whether or not it is entirely plain to her?

Mr. Martin: You know what I am objecting to. I object to any line of inquiry such as the previous question. There is no direct testimony as to what was done in any of these particular departments of 3255
the store. Miss Goldstein's testimony was that in the lines affected there was a 16.6 per cent. decrease for the five months' period of 1936 over the same period of 1935, but there was no figure or no accounting at all with reference to these various departments where those dresses were sold. If he wants to go ahead and question her on just the dresses involved in this phase of the price lines, I

will concede the correctness of that, but outside of that it is improper cross-examination.

Mr. Weisman: Of course it is perfectly obvious that this witness comes here and says that in the particular line of dresses, "which I picked out and which I say are affected by the Guild there was a decrease."

Now, it is perfectly competent for me to show, especially since she limited to $16.75, to show that in these departments, as bearing upon the testimony in this case, the Guild operated from $3.75 to $4.75, and, furthermore, to show that at the time, as a
3257 whole, that they did equally well, and that such being the testimony that the testimony that this witness has given is barren and worthless and of no effect or value because we can show, by this full picture, just what took place, and that the Guild activities were not properly reflected in the comparisons which were taken. In other words, on direct testimony, this witness made certain statements with reference to what she claimed was price lines which were the Guild price lines, or price lines affected by the Guild program. I think it is perfectly proper for me on cross-examination to refute and show that that statement is incorrect, and that, as a matter of fact, the Guild program covered other dresses besides those that she said, in her opinion,
3258 were dresses in price lines affected by the Guild policy. It goes directly to the value and worth of her statement, and also as to its accuracy.

Examiner Bennett: I think that would be perfectly all right in your direct case. I sustain the objection.

Mr. Weisman: Exception. I now wish to make this formal offer of proof, that if I had been enabled to pursue this line of inquiry a little further it

would have developed that in every dress department consisting of women's and misses' inexpensive dresses and women's better dresses and misses' better dresses, there was no such recession in total volume, and, furthermore, that all of their departments are equally affected by the Guild program, so that the prior testimony on this subject by this witness is totally without any probative value, or worse.

I respectfully except to the Court's ruling. I think this is a vital and substantial denial of the essential rights of the respondents herein. I shall say no more. I will now go to the next question. 3260

Examiner Bennett: Just a moment. I merely want to remark that assuming that that offer of proof could be fulfilled, it is irrelevant as to a test of the witness on her direct testimony, so therefore it was shut out by the Examiner.

Mr. Weisman: I must respectfully except to your Honor's statement, and reiterate again all of the grounds just stated as a reason for propounding this question.

Examiner Bennett: You have your exception.

Mr. Weisman: Thank you.

By Mr. Weisman.

Q. In any event, your study limited itself to a comparison of those particular price lines; is that correct? A. Yes, those particular price lines. 3261

Q. Yes. You did not take into consideration what was done at $4.75; is that so, wholesale?

Mr. Martin: I object.

Examiner Bennett: I will let her answer that.

By Mr. Weisman.

Q. Did you? A. I was concerned with price line effect.

Q. I said, I ask you—I did not ask you whether you were concerned with price line effect. I asked you to take into consideration the business done by R. H. White & Company in $4.75 wholesale price dresses? That, now, is a very simple question; it is a direct question, and I think you ought to be able to answer it. A. In unit control you compare price line with price line. That is the purpose of a unit control record.

Q. That does not answer my question. I will put it to you again because I think you can answer it: Perhaps if
3263 you know that I am seeking to present evidence to the Commission and to the Examiner that you are purposely and willfully and definitely and intentionally continually evading an answer to my question, and let me assure you that that will not help R. H. White & Company, please bear that in mind.

I am going to ask you the question again: The question I am asking you is whether or not in your fixing the volume done in the respective and comparative periods, you took into consideration the business done by R. H. White in regard to dresses which cost wholesale $4.75. A. I was considering those that went——

Q. "Yes" or "no"; "yes" or "no." A. The line of dresses involved priced at $16.75 and up.

3264 Q. In other words, in giving us those figures you did not take into consideration any dresses which cost R. H. White less than $16.75? A. I will correct it, $10.75, because I have referred to the retail price; that is what I was referring to.

Q. $10.75. It is perfectly obvious you did not take into consideration any lower priced dresses; is that so? A. At that time, no.

Q. Why would you not tell me that a moment ago? A. I told you that.

Q. That is your best answer? A. Yes.

Q. All right. A. Yes.

Q. Is it your statement that your business is wholly unaffected by the Guild program with regard to any dresses which cost wholesale less than $10.75?

Mr. Martin: I object to that. She did not make that statement.

Mr. Weisman: I say she did make it, or she did not make it, and I want to find out just what the facts are about it. Let the witness answer the question and she will tell us.

Mr. Martin: I object.

Examiner Bennett: I will let you answer it. 3266

The Witness: What is the question?

Q. (Question read.) A. No.

By Mr. Weisman.

Q. You do know, do you not, that the Guild program does affect dresses below $10.75? A. Not since we have been red carded.

Q. You mean since you have been red carded the Guild program does not affect you at all because you do not adhere to it? A. It does not affect us in the lower-priced lines.

Q. You are not affected to-day one iota? A. In the lower-priced line. 3267

Q. In the lower-priced line; is that so? A. Yes. That is so.

Q. In other words, the Guild program, be it good or bad or indifferent, does not concern you, it does you no good and it does you no harm in the lower-priced lines; that is, the price lines below $10.75?

Examiner Bennett: I do not understand this part of the inquiry. I would like to know. I under-

stood from this witness there were two periods covered by her study, and she is now being questioned about the five months which are in 1935, and the five months which are in 1936.

By Examiner Bennett.

Q. Is that true? A. Yes, sir.

Q. Now, tell me whether during the former period which your study covered those low-priced dresses were within the scope of the Fashion Originators Guild of America; whether they were part of the dresses that were affected by the policy of the Guild? A. They were affected to the
3269 extent——

Q. They were affected? A. Yes, sir.

Mr. Weisman: I submit, your Honor, I would like to have an answer to your Honor's question.

Examiner Bennett: Just a moment.

By Examiner Bennett.

Q. Pay attention to the question and to the period. I mean, in the period 1935, the five months of 1935 you said— A. Yes.

Q. I just want to know. I am asking for information. I want to find out what was included. A. Yes, they were affected in 1935 to a degree.

Q. Were they affected in 1935, then? A. Yes, sir.
3270

By Mr. Weisman.

Q. When you were carrying merchandise at $10.75, as you stated, did you frequently find that this merchandise was copied down so that copies of it might appear, or did appear at, let us say, $8.75, or lower prices than $10.75?

Mr. Martin: I object.

Examiner Bennett: I sustain the objection.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Now, I understood you you stated that there were two merchants with whom you had trouble in placing orders with the stamp for some time in 1935; is that correct? A. For a time.

Q. Yes. And for how long a time? A. I don't remember the exact period. But I would say, my best knowledge, about a month or six weeks.

Q. And then that difficulty cleared up? A. It would clear up and break up again.

Q. Well, let us see. In 1935 the Noxall Waist & Dress Company and Frieberg & Weisen refused to accept your orders with the warranty stamp on them? A. Yes. 3272

Q. And they continued to refuse to accept them for about 30 days? A. About that time.

Q. And then they decided that they would accept them and whatever orders you were kind enough to give them they accepted from you? A. Yes.

Q. And during all of that—and since then, you have, from time to time, done business with Frieberg & Weisen? A. Yes.

Q. And with the Noxall Waist & Dress Company? A. Yes.

Q. And when they have taken your orders, you, in accordance with your store's declaration of co-operation, put on there the warranty which told them that you would not accept copies of original merchandise manufactured by the Guild members; is that so? A. Yes. 3273

Q. Now, you understood this stamp, did you not, the wording of it, you said you knew its terms? A. Yes.

Q. Now, what were its terms? A. That——

Mr. Martin: I object to that, your Honor. The stamp is in evidence.

Mr. Weisman: I want to know what she understood its terms to be.

Mr. Martin: He is asking her what the terms are.

Mr. Weisman: No, I didn't say that. I said, "What do you understand the terms to be?"

Examiner Bennett: All right.

Mr. Martin: What the terms are.

Examiner Bennett: You may answer.

Mr. Martin: All right; go ahead and answer.

A. That our store was not to be shipped, or to knowingly accept copies of dresses registered with the Fashion Originators Guild of America.

By Mr. Weisman.

3275 Q. As originals. And as long as that was the commitment of R. H. White, you wanted to keep it? A. Yes, sir.

Q. And in the keeping of it you sought not to knowingly purchase or acquire copies of Guild merchandise, original Guild merchandise? A. Yes.

Q. And if you did acquire it, unknowingly—no, I will withdraw that. If you did acquire it during this period, I take it, you would only buy it unknowingly; is that not so? A. Our buyers would be guilty unknowingly.

Q. Yes. I mean, it was not your purpose to try to buy copies and, in the vernacular, get away with it? If copies appeared, you did not want them there, because you knew your store's policy and its promise; is that not so? A. Yes.

3276 Q. No question about that. I mean, a store like R. H. White would not enter into a commitment with a set of merchants, and then seek to break it; if you broke it, that was an innocent thing; is that not so? A. Yes.

Q. And you knew that other merchants and retailers were also cooperating in the Guild policy, did you not? A. Yes.

Q. You were not alone in it, in Boston, there were others? A. Yes, sir.

Q. And you expected the others also to keep up to their commitments; in other words, it was a sort of two-party or ten-party or trade arrangement; is that not so? A. I don't know.

Q. Well, let me ask you the question this way: You knew that certain competitors were also co-operating with the Fashion Originators Guild, did you not? A. Yes.

Q. And you expected them in their co-operation to be honest, so that no unfair advantage would be taken of R. H. White competitively: is that not so? A. I did not have that power to expect.

Q. No, I did not say that you could enforce it—I say that you expected your competitors to be honest, did you not? A. I did not question their honesty. 3278

Q. In other words, you took it for granted; is that not so? A. Not from my experience, I could not take it for granted.

Q. Well, did you think all your competitors were dishonest? Is that what you mean to infer, and that all honesty lies only with R. H. White & Company? A. I am not discussing their honesty; I am trying to infer our experience that at times dresses we had to return were found in other stores.

Q. All right. Let us see, then. Was R. H. White desirous of being honest in their co-operation with the Guild? A. I don't understand what you mean by honest.

Q. I see. Were R. H. White desirous of using their best and sincere efforts, while they were co-operating with the Guild, to see that no copies were handled by them of Guild merchandise? A. Yes, with exceptions. 3279

Q. I see. Now, where they made a mistake and got copies of Guild merchandise were they pleased to have that mistake called to their attention? A. Yes.

Q. Was that what Miss Brady frequently did? A. Yes.

Q. Now, suppose Miss Brady were mistaken, would you accept her word, just send it back without finding it out

whether or not it was a copy? A. We were never confronted with that situation.

Q. Well, what do you mean by that, that she only came to you where dresses had already been adjudged copies and gave you the evidence of the fact that they had been adjudged copies? A. Yes.

Q. I see. And then when Miss Brady came to you and gave you evidence that the dress had been adjudged a copy, and then you would return it? A. Yes, in the main.

Q. In other words, Miss Goldstein, you were running your business, were you not? You never abdicated your duties, did you? A. I run my business under the super-
3281 vision and guidance of my superiors.

Q. Of your superiors. I mean that. And the reason that you would return copies of dresses was because you were satisfied that they had really been adjudged copies; is that not so? A. Yes.

Q. And when you said to Mr. Martin that you returned them solely at the request of Miss Brady, you do not mean that in the exercise of your duties you would not have returned them if you knew they were copies, and Miss Brady did not come in to tell you to return them—you were desirous of carrying out your promise, were you not? A. Yes.

Q. And if Miss Brady had not come in to tell it to you, and you knew, or had found out that they were copies of Guild merchandise, as an honest merchant R. H. White
3282 would have returned those dresses——

Mr. Martin: I——

By Mr. Weisman.

Q. —in accordance with their declaration of co-operation; is that not a fact?

Mr. Martin: I object, your Honor, pure speculation.

Mr. Weisman: It is not at all. It is a statement of fact. Honesty is a fact, just as much as weight, and I am quite convinced——

Examiner Bennett: Let her answer.

Mr. Weisman: Yes.

By Mr. Weisman.

Q. The Court says you may answer.

The Witness: May I have the question?

(Question read.)

A. If we knew, if it was called to our attention?

Q. Yes. A. By Miss Brady or otherwise. 3284

Q. Or otherwise. And the reason you returned dresses was to keep your commitment with the Guild, is that not so, and with those who were otherwise co-operating with the Guild? A. I can answer for ourselves only.

Q. I only want you to answer for yourselves, that is right. For yourself, what about it? A. Just for White's, yes.

Q. Yes. And you knew that your commitment was to return only dresses that were copies of Guild merchandise, original Guild merchandise; is that not so? A. Yes.

Q. And you were not willing to go beyond that commitment, were you? A. I don't understand that.

Q. I mean, you would not return dresses to please somebody, you would only return dresses because they were copies of Guild merchandise; is that not so? A. Involving a Guild discussion, yes. 3285

Q. Yes, I mean that, that is all right. Now, how long did you know Miss Brady? You said you met her in 1935; do I understand your answer? A. I believe she breezed up to my office some time in 1935, I think.

Q. You think she is a sort of breezy person? A. She is little and quick.

Q. She came in and she told you who she was? A. I believe I had to ask for her credentials.

Q. But you got them? A. Yes.

Q. Were you not rather glad to meet her? A. Yes, of course.

Q. I mean, she was going to help you keep your promise, see that you did not unknowingly break your promise that you were desirous of keeping; is that not so? A. Yes.

Q. And keeping that promise was a moral and ethical duty which by consent it had undertaken—the promise; is that not so? A. That is, excluding my firm's promise.

Q. Yes, and, therefore, realizing that she was going to
3287 help you maintain your firm's moral and ethical standards, you were glad to see her, were you not, as you would anyone else who was going to do that? A. I do not know what you mean by "glad."

Q. Pleased. A. I do not know what you mean by "pleased."

Q. Well— A. That does not always enter into every transaction of a business.

Mr. Martin: I object—all right.

By Mr. Weisman.

Q. Then, I will ask you—I will withdraw it. Are you not always pleased when someone aids you in fulfilling a moral duty which otherwise, through lack of knowledge,
3288 you might not be able to fulfill?

Mr. Martin: Objected to as being immaterial.

Mr. Weisman: Oh, I think it is very material, Judge.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: Are we having a——

By Mr. Weisman.

Q. Now, on these various occasions, Miss Brady would come into the store and she would see you, as the chief person in charge, I think you testified, or, if you were not there, she would see the buyers? A. No, the reverse; if the buyers were not there she would see me.

Q. She would see you? A. Yes.

Q. And if the buyer were not there when she would see you, she would come in and say to you, in words or substance, "Miss Goldstein, your No. so and so is a copy of a dress which was originated by a member of the Fashion Originators Guild. That number has already been adjudged a copy on somebody else's complaint, and we don't 3290
think you ought to carry it in accordance with your promise"; is that not so? A. Well, she would not go into details.

Q. No. A. No.

Q. In substance? I was not there. Now, when you found that out, that gave you an opportunity—when you found that out to be a fact, that gave you an opportunity of fulfilling the pledge which your store had undertaken; is that not so? A. With exceptions, yes.

Q. Yes. I know. You mean reservations? A. That is right.

Q. That is right? A. Thank you.

Q. You are talking about the reservations that Mr. Seegal spoke about? A. I had my own.

Q. Oh, you had your own? A. Yes. 3291

Q. Mental? A. I have not qualified them.

Q. Well, I want you to now. Were those mental reservations or were they physical reservations, or did you write them out?

Mr. Martin: I object to this, your Honor.

Mr. Weisman: She says "reservations." I am entitled to know what kind of reservations the lady had, they were not——

Mr. Martin: Immaterial.

Mr. Weisman: Anything about her personal affairs; they were about this subject matter.

Mr. Martin: Not proper subject of cross-examination.

Examiner Bennett: I will sustain the objection.

Mr. Weisman: All right.

Examiner Bennett: Because it is going into——

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Now, you said that the first time you found out you
3293 were red carded was around February 10, you found it out through an article in the "Women's Wear"?

Mr. Weisman: Please note, reporter.

By Mr. Weisman.

Q. Before then hadn't you had quite a lot of extensive correspondence with the Guild concerning certain copies that you had refused to remove? A. Not my correspondence.

Q. Well, you knew that Mr. Rapheal was having correspondence, did you not?

Mr. Martin: Objected to.

Mr. Weisman: This is perfectly good, Judge; it
3294 is not only good, but it is——.

Examiner Bennett: I do not know how we can get anywhere——

Mr. Martin: Being in their cross-examination—

Examiner Bennett: Yes.

Mr. Weisman: Judge, may I be heard on that? Here is a witness——

Examiner Bennett: Well, tell me.

Mr. Weisman: Yes.

Examiner Bennett: Was the gentleman you named, was he her superior?

Mr. Weisman: Yes, he is the president of the company.

Examiner Bennett: Well, I will sustain the objection to that. It is merely going into something that would be totally a hearsay proposition on her part. She is not directing her superiors, nor are they reporting to her.

Mr. Weisman: Well——

Examiner Bennett: She gets nothing from——

Mr. Weisman: When I said it was immaterial whether or not she knew about the red carding, your Honor ruled against me, because, of course, I 3296
adopted the same course of thought that your Honor is now adopting. You might just as well suppose we put an office boy on the stand and he says, "I do not know when this and this happened." The important thing is that the executive head of a concern knew all about it. Now, your Honor heard her answer because she said, oh, in the usual course she would have letters. Now, when I seek to bring out in this very business——

Examiner Bennett: I did not say anything about the usual course in connection with the red carding.

Mr. Weisman: How?

Examiner Bennett: I say, I said I did not say 3297
anything about the usual course in connection with the red carding.

Mr. Weisman: Your Honor let her testify that if she did not learn—that if—the materiality, then was her testimony, Judge, that she did not learn about the red card until she read it in the paper? That was tendered by these people to show lack of adequate notice to them.

Examiner Bennett: I presume it was tendered for the purpose of showing that when the Guild red carded people it went out and published it broadcast it over the United States. I presume that was the reason for it, and I think it is a rather good reason in connection with this proceeding.

Mr. Weisman: If your Honor——

Examiner Bennett: They are charging boycott and the product of boycott is to make known that their act in boycotting the concern——

Mr. Weisman (interposing): Well, if your Honor limits——

3299 Examiner Bennett: That was the reason, that was the reason that I sustained that.

Mr. Weisman: Well, then, I submit that it was entirely immaterial because there was not any proof at all that we released it to the "Women's Wear"——

Examiner Bennett: Well——

Mr. Weisman: Well, it is equally as possible that these people gave a statement as well on that side of that question, and that hundreds of statements were issued on all sides of this controversy.

Examiner Bennett: It doesn't make any difference who released it, that particular combination.

Mr. Weisman: In view of your Honor's statement, it would make a great difference, and I ask that since that was the purpose for which your 3300 Honor admitted this testimony, on this witness' direct testimony, that the same be stricken from the record now.

Examiner Bennett: That was one purpose. I deny the motion.

Mr. Weisman: Exception.

Where is that letter from Miss Goldstein?

(Counsel hands paper to Mr. Weisman.)

By Mr. Weisman.

Q. Now, you said you did not know anything about this. Is that right, that Mr. Rapheal may have been aware that there was a controversy between the Guild, which started in November and went—without looking at the rest of this letter, I ask you whether or not that is your signature? A. That is.

Q. Now, a moment ago you testified, did you not, that you did not have any part in the correspondence which led up to the red card; is that so?

Mr. Martin: Objected to, your Honor. I object to any line of testimony of this kind to show any controversy that they may have had with the Guild 3302
at any time prior to red carding, for any purpose. That was not brought into question by direct testimony. This witness was asked the specific question of when did you first know the store was red carded and she testified early in February of 1935. She was then asked how did she know it, and she said that the first knowledge she had was in "Women's Wear."

Now, anything dealing with any controversy between these parties prior to that time was not brought into question, and I submit that any cross-examination on that is irrelevant and is not proper cross-examination. She has testified fully to what she was asked, but she was not questioned with re- 3303
gard to the other subject matter, and I submit that it is not proper cross-examination.

Mr. Weisman: Of course, here is a witness that says the first time she learned of this was in February, 1936. She says she learned it through "Women's Wear."

Mr. Martin: Now, be more specific, Mr. Weisman—letters of being red carded.

Mr. Weisman: Red carded.

Mr. Martin: Let us make that certain.

Mr. Weisman: That is all right, that is all right. I am sure the Court so understood that this is it, and that she learned it through the "Women's Wear."

Now, I submit that this testimony has been admitted over my objection.

Examiner Bennett: Yes.

Mr. Weisman: It could only have been admitted on one of two theories, either to show that we notified the world when we red carded someone, if it is admitted and limited to that theory alone I must

3305 then renew my objection and move to strike it out because there was no proof that we gave it out and I do not know that we did.

Examiner Bennett: I do not know that it made any difference who gave it out.

Mr. Weisman: Yes.

Examiner Bennett: It was just simply——

Mr. Weisman: And I——

Examiner Bennett: Just a moment. With that sort of combination in existence, of course its actions became public.

Mr. Weisman: Yes.

Examiner Bennett: The trade gets it.

Mr. Weisman: That is right.

3306 Examiner Bennett: That does not make any difference.

Mr. Weisman: Now, I had assumed that there was an offer to show that this Guild acts arbitrarily, quickly, that you do not get a chance to argue with them, that they say, "You cannot have merchandise if it is offered for that purpose."

Now, I want to show that for three months we sought to adjust this controversy, and that it was

only when the letters finally came in, and they said to us that you can't adjust, that then we had nothing to do——

Examiner Bennett: That is part of your direct case.

Mr. Weisman: Well——

Examiner Bennett: I will sustain the objection.

Mr. Weisman: Exception.

I think I can get through very speedily with this witness.

Examiner Bennett: Yes. We will, unless you can keep that 1 o'clock promise, why——

Mr. Weisman: I am pretty close to it now.

3308

Examiner Bennett: I am afraid we cannot go ahead indefinitely; we have been in session a long time.

Mr. Weisman: Just one question.

By Mr. Weisman.

Q. Did you see the letter sent out by Mr. Reilly of the A.M.C.?

Mr. Martin: Objected to as improper cross-examination.

Examiner Bennett: Sustained. I understand that is one of the letters that had to do with this controversy?

Mr. Weisman: Yes.

3309

Examiner Bennett: All right.

Mr. Weisman: May I say—and I want to say it very quickly—Judge, do you not think that it is rather fulsome of us to come back to Boston on our direct case just to prove a point like this?

Examiner Bennett: Well, yes, you will probably be in Boston all right.

Mr. Weisman: What?

Examiner Bennett: You will probably be in Boston all right.

Mr. Weisman: I doubt it very much, unless I come here to get those records—well, maybe you are right. I will subpoena them. Maybe I will be here for these other people. I except to your Honor's ruling, notwithstanding.

By Mr. Weisman.

Q. When you received Commission's Exhibits 361-A and B, did you make any response thereto? A. I do not recall.

Q. That is another one of the things you cannot remember; is that it? A. I don't recall.

3311

Q. Well, look at it and refresh your recollection and see whether or not thus refreshed whether you made any response? A. (Witness examines paper.) I don't remember.

Q. Well, did you, on and after the time you received this letter, adhere to the program therein set forth? A. With our usual——

Q. Reservations? A. Reservations.

Q. In other words, you felt that you had the right to only perform your promise towards the Guild as long as the promise did not run counter, or the performance did not run counter, to these reservations that you refer to?

Mr. Martin: I object to that; not in evidence.

Examiner Bennett: You may answer.

3312

By Mr. Weisman.

Q. The Court says you may answer.

Mr. Martin: Go ahead.

A. As long as it did not embarrass us to the extent of being non-competitive.

Q. Now, my dear girl, will you—in other words—and I have it from you—your reservations with your promise

to the Guild, were that you would fulfill the promise as long as it did not embarrass you to fulfill it in so far as your competitors were concerned; is that it? A. Yes.

Q. And as a result of those claimed reservations on your part the Guild and R. H. White had a number of differences commencing in or about November, 1935?

Mr. Martin: I object to that, your Honor; improper cross-examination.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. My offer of proof would be that that was the basis thereof.

By Mr. Weisman. 3314

Q. And, as a result of these claimed reservations, your store—the Guild finally notified its members that your store was no longer co-operating——

Mr. Martin: Objected to.

Q. Is that not so?

Mr. Martin: Your Honor——

Examiner Bennett: Sustained.

Mr. Weisman: That is the red card.

Examiner Bennett: Sustained. She——

By Mr. Weisman.

Q. When you say—well, I will withdraw that. I think that is all with this witness. 3315

Examiner Bennett: All right. Any redirect?

Mr. Martin: No redirect examination.

Now the witness may stand down.

Mr. Weisman: Well, I do not want this witness to leave.

(Witness excused.)

3316 *Anna Goldstein—For Commission—Cross.*

Mr. Martin: Now, if your Honor please, at this time the Commission has no further evidence to offer in Boston, and we ask that the Examiner recess to meet in Philadelphia on Friday morning, July 31, at 10.30 o'clock, in Room 313 of the U. S. Post Office Building.

Mr. Martin: Well, your conferee had it.

(Thereupon, at 1.10 o'clock P. M., July 29, 1936, the hearing in the above-entitled matter was adjourned.)

3317

BEFORE THE

FEDERAL TRADE COMMISSION.

IN THE MATTER OF FASHION ORIGINATORS GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, NATIONAL FEDERATION OF TEXTILES, INC., their respective officers, directors and members.	Docket No. 2769.

3318

Court Room No. 313,
U. S. Post Office Building,
Philadelphia, Pa.,
July 31, 1936.

(Met pursuant to adjournment, 9.30 A. M.)

Before: JOHN W. BENNETT, *Examiner*.

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

MILTON C. WEISMAN, Esq., GEORGE FELDMAN, Esq., HERBERT S. KELLER, Esq., and M. A. ALBERT, Esq., appearing for the Fashion Originators Guild of America, Inc.

ALLEN S. OLMSTED, 2ND, Esq., of SAUL, EWING, REMICK & SAUL, 2301 Packard Building, Philadelphia, Pa., appearing for John Wanamaker of Philadelphia.

MR. JAMISON of SUNDHEIM, FOLZ & SUKHEIM, 1632 Bankers Securities Building, Philadelphia, Pa., appearing 3320
for Lit Brothers, Philadelphia.

PROCEEDINGS.

Examiner Bennett: Be in order, please. This is a reconvening of Fashion Originators Guild of America, Inc. et al., Docket No. 2769, from Boston, Massachusetts.

You may resume, Mr. Haycraft.

Mr. Haycraft: I will ask Mr. Tily to take the stand at this time.

Will you be sworn, please, Mr. Tily.

HERBERT J. TILY was thereupon called as a witness for 3321
the Commission, and, having been first duly sworn, testified as follows:

Examiner Bennett: What is the name, please?

The Witness: Herbert J. Tily.

Direct examination by Mr. Haycraft.

Q. Where do you live, Mr. Tily? A. Cynwd, Pennsylvania.

Q. Is that a suburb of Philadelphia? A. Yes.

Q. What is your occupation? A. President of Strawbridge & Clothier.

Q. How long have you occupied that position? A. As president, for nine years.

Q. In what business is Strawbridge & Clothier engaged? A. General store, commonly known as a department store.

Q. Where is it located? A. Eighth and Market Streets.

Q. In the City of Philadelphia? A. In the City of Philadelphia.

Q. How long has Strawbridge & Clothier been established as a department store in Philadelphia? A. It was originally what was known as an old dry goods store, es-
3323. tablished in 1868, and somewhere in the late '80's it began to develop into its departments, and became known as a department store.

Q. Does it handle, among its merchandise, women's and misses' dresses and coats? A. It does.

Q. How long has that been true? A. In the early '90's that was started.

Q. Does it have a substantial department engaged in that business?

Mr. Weisman: Objected to, I object to the word "substantial" on the ground it is incompetent, immaterial, and irrelevant, calling for a conclusion of this witness.

Examiner Bennett: Overruled; he may answer.
3324

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. You may answer. A. Substantial, yes. It has been a very successful department of its business from its inception.

Mr. Weisman: I ask that the latter part of the answer be stricken out. The business might be sub-

stantial or unsubstantial and be successful or unsuccessful.

Examiner Bennett: Not responsive; objection sustained.

Mr. Weisman: Thank you.

By Mr. Haycraft.

Q. Can you give the approximate volume of sales of your women's and misses' dress, suit and coat departments annually? A. At the present time?

Q. Yes.

Mr. Weisman: Just a moment. You said "annually," did you not, in your question? 3326

Mr. Haycraft: Yes.

Mr. Weisman: And the witness asked you—you said "annually." The witness said "At the present time?" You said "Yes."

Now, which is it?

Mr. Haycraft: That question can be answered, Mr. Examiner, in the exact form it is now placed.

Examiner Bennett: Overruled. He may answer.

Mr. Weisman: Exception.

A. Annually, in the neighborhood of 3 millions of dollars.

By Mr. Haycraft. 3327

Q. Now— A. May I say that applies to dresses.

Q. It does not include coats and suits? A. Well, we will include coats and suits, approximately, yes—dresses alone, $3,000,000—I am ashamed to state I cannot remember the exact figures, but they can be obtained.

Q. Now, to what class of trade does Strawbridge & Clothier cater in the sale of its women's dresses and coats and suits? A. To all classes, especially noted for its trade in the better lines of merchandise.

Q. Now, in the sale of dresses, coats and suits, women's and misses', how would you group these garments with respect to prices at which they are sold to the public? A. Group them—you mean as to what price lines?

Q. Yes. A. Well, in dresses they run down according to the division of our departments, department $3.95 up to the very highest lines.

Mr. Weisman: Would your Honor ask the witness to let us know whether or not that is at cost or at retail sales' price?

Mr. Haycraft: I will ask the witness that in due time.

3329 Mr. Weisman: Well, otherwise the question is unintelligible. I do not want it in due time. I am asking your Honor to direct Mr. Haycraft to ask him now so that we may know what we are talking about.

Examiner Bennett: Well, I will ask him——

Mr. Weisman: Thank you.

Examiner Bennett: —whether it is retail or wholesale.

The Witness: Retail.

By Mr. Haycraft.

Q. What is the highest price or range of prices at which you sell garments at retail? A. That question can be bet-
3330 ter answered by one of our divisional managers.

Q. Are you familiar with the wholesale prices paid for women's dresses? A. Not sufficiently familiar to be cross-examined on it. I think that could be better answered by those who are taking care of that part of the business.

Q. Well, do you have a group of dresses that you sell to the better class—I mean—strike that out. Do you have a group of dresses which you describe, or which are generally known, as the better dresses? A. We have.

Q. Do you know which price range is included in that classification? A. Better dresses start from $19.75, the department that we know as our better dress department.

Q. That is the retail price? A. The retail price.

Q. Then do you have moderate priced groups of dresses? A. We do.

Q. Below that? A. Yes, we do.

Q. About what range, approximately? A. The moderate price would run from oh—ten—$10, retail, up to $19.75.

Q. Then, do you have what is known as an economy store, economy shop? A. We have.

Q. In women's dresses? A. Yes, we do.

What price range would that be? A. They run below, quite a bit below. 3332

Q. Then do you have a basement store where women's dresses are sold? A. Yes.

Q. Are you familiar with what is known as the Fashion Originators Guild of America, Inc., the respondent in this proceeding? A. Unfortunately, yes——

Mr. Weisman (interposing): I ask that that be —"Yes" is the answer.

I move to strike out the word "unfortunately," because obviously the witness does not yet commence to know how unfortunate he may hereafter be, and it is merely a conclusion of this witness whether he is presently unfortunate. I ask that it be stricken out. 3333

Mr. Haycraft: I think it can stay, Mr. Examiner.

Mr. Weisman: He was asked whether he was acquainted, and he said "Unfortunately, yes."

Examiner Bennett: Well, all except "Yes" may be stricken.

Mr. Weisman: Thank you. Wait just a moment. May I also ask the Court to advise the witness to directly answer the questions without qualification,

such as have just had. We will get further and go faster.

Examiner Bennett: All right.

By Mr. Haycraft.

Q. When did you first become acquainted with the Fashion Originators Guild of America, Inc.? A. Some time in the autumn or winter of 1932.

Q. What were the circumstances? A. We had received notification from them of their plans, and told what they proposed doing, which included—which begun with their desire—their statement was—began with their desire to
3335 eliminate style piracy in the business.

Q. In what industry? A. In the dresses, coats.

Q. Were you ever solicited to cooperate with the Guild in that plan? A. We were.

Q. When? A. It began, I should say, in the fall or autumn of 1932.

Q. Who made the solicitation? A. It was made by letter by the F.O.G.A., my recollection is, signed by their managing director, Mr. Post.

Q. I show you Commission's Exhibit 99-A to C, inclusive, and ask if you received a copy of that letter from Mr. Rentner, president of the Guild, in June, 1933? A. The facts are so familiar that I presume that letter was received, as I probably had no other way of getting the
3336 facts, although I cannot positively identify that exact letter.

Q. Do you recall, do you have any recollection of receiving letter from Mr. Rentner, with respect to this proposition? A. Yes.

Q. Who was Mr. Rentner at that time, to your knowledge? A. I am not positive as to what he was at that time.

Q. Did you subsequently indicate to the Guild that you would cooperate? A. Subsequently, yes.

Q. Do you have with you a letter indicating the extent to which you would cooperate with the Guild? A. Yes.

Q. May I have it? A. (Witness hands paper to counsel.)

(Letter from Strawbridge & Clothier, under date of June 30, 1933, to Fashion Originators Guild of America, Inc., was marked for identification Commission's Exhibit 362.)

Mr. Haycraft: I offer this letter in evidence, Mr. Examiner, Commission's Exhibit 362.

Examiner Bennett: 362.

By Mr. Haycraft. 3338

Q. Mr. Tily, were there any reasons or circumstances, to your knowledge, aside from those indicated in the two exhibits which have been received in evidence, Commission's Exhibits 362 and 363, which prompted you to cooperate with the Guild in the manner indicated in those two exhibits?

Mr. Weisman: Objected to; first, that——

Examiner Bennett: I think if there were reasons expressed to this respondent—if no, I will have to sustain the objection.

Mr. Weisman: Thank you.

Examiner Bennett: If there were reasons expressed to this respondent, or brought to its attention 3339 in some way, well, it would be binding on the respondent; otherwise, I do not see why it would be.

By Mr. Haycraft.

Q. I call your attention, Mr. Tily, to the following statement in Commission's Exhibit 363: "We are in entire sympathy with your effort to stop the unethical practices from

3340 *Herbert J. Tily—For Commission—Direct.*

which both manufacturers and retailers suffer." I will ask you what those practices were that you had in mind when you wrote that letter?

Mr. Weisman: Objected to as incompetent, irrelevant and immaterial.

Examiner Bennett: Overruled; he may answer.

Mr. Weisman: Exception.

The Witness: Will you read that question, please.

Q. (Question read.) A. Largely the copying of designs of dresses, largely that.

3341

By Mr. Haycraft.

Q. I direct your attention to the next statement: "We will continue to cooperate with you just so long as it is possible for us to do so—reserving to ourselves the right to discontinue or change the present understanding." Did you, in your discussions with representatives of the Guild, raise any question as to the practicability of cooperating with the Guild in its plan?

Mr. Weisman: Objected to as incompetent, irrelevant and immaterial, and, furthermore, that it is a question which is improper in form, and I ask that the first part of the question, which is a quotation, which could bear no relation to the question,

3342 and does not as framed, be stricken out.

Furthermore, I ask that counsel be directed to cease attempting to lead the witness in this fashion. It is counsel testifying and not the witness. Counsel states the question and the witness says yes. That is not testimony from this witness.

Examiner Bennett: I will instruct the witness that that question can be answered "yes" or "no," and to answer "yes" or "no," and I will overrule the objection.

The Witness: May the question be read, please?

Q. (Question read.) A. I did not personally.

By Mr. Haycraft.

Q. Who else, besides yourself, in your organization, were in on these negotiations between the Guild and Strawbridge & Clothier? A. Our divisional merchandise manager, Mr. Taylor; our general merchandise manager, Mr. Smith.

Q. At the time that you signed this letter of cooperation, Commission's Exhibit No. 362, did you know who were the members of the Fashion Originators Guild of America, 3344
Inc.? A. Not in detail. I knew what their line of business was, that they were manufacturers of the better type of dresses and coats. As to the details of the names, no, but as to the characterization, or the type of business they were doing, yes.

Q. The language I wish to call your attention to is as follows: "We are proceeding on the principle that since the Guild comprises all the outstanding style houses of the country, every retailer who is desirous of conducting his business in a wholesome, capable manner, will subscribe to the upholding of the policy enunciated by the enclosed declaration."

I will ask you whether or not you have a recollection of being told by representatives of the Guild that which 3345
I have just called your attention to? A. Not told to me personally, no, but I know that that condition existed.

Mr. Weisman: I object. The witness has answered the question, and I ask that he be directed to heed the Court's admonition that he confine himself to answering the question and then stop. Tactics of this kind very clearly show the type of

witnesses that are being brought here, and the extreme bias with which their witness is presented to the Court.

Mr. Haycraft: Rubbish.

Examiner Bennett: I will strike out the latter part of the answer.

By Mr. Haycraft.

Q. Do you know of your own knowledge that that is the condition that existed in the industry? A. Yes.

Q. Yes? A. Yes.

Q Were those facts, to which I have directed your
3347 attention, and which you say you know about of your own knowledge, and did know about, a factor which you took into consideration at the time that you signed your declaration of cooperation, being Commission's Exhibit 362? A. Yes. The two outstanding factors was the fact that they did include practically all the manufacturers in that type of business, and that the threat, if I may so denominate it, was that our buyers, unless we signed, would not only not be sold, but would not have access to their showrooms.

That was the determining factor. We had a fine business, looked upon as a representative store of the better class, and it was utterly impossible for us to carry on and maintain our good will because I do not refer to good will, itself, in reference only to dresses and copies, but there is
3348 the finer thing, the inability of a better class consumer to get from us those fine things, through us, all of her better class articles which, in turn, meant that they could not get that from us, and that went through all our better class trade, because it necessarily sent them to competitors. If they were not able to get certain types of dresses from us, the better types of dress, we would lose business all the way down the line, because they would go to the other type of manufacturer's outlet, namely, the store in Philadelphia

where they could obtain them, and our customers would be going to our competitors. We viewed with great alarm the possible effect upon our business. That was the major factor.

Q. How long were you a member—how long were you cooperating with the Guild in its plan of stamping out style piracy? A. From June 30, 1933, until we were red carded in February of this year.

Q. Are you familiar with the reasons assigned by the Guild for the red carding of Strawbridge & Clothier? A. Yes. The reason stated, the alleged reason was that we failed—had failed to cooperate with it—the major statement or major factor was that we failed to cooperate—that 3350
we had refused to give the name of a manufacturer who had allegedly made copies and sold them to us.

By Mr. Weisman.

Q. This is the subject of correspondence? A. Not by me.

Q. No? A. No.

Q. Do you have any personal knowledge of what you are now testifying to, or is it what somebody else told you and which is contained in correspondence? A. It was told to me. They spoke about the letters.

Mr. Haycraft: I object to the witness being interrupted in this fashion. I insist that he be allowed to complete his answer and then counsel may object. 3351

Mr. Weisman: Look here, my dear fellow, I ask that an examination on the voir dire be allowed in order to test this witness' testimony for the purpose of making an objection to it.

Mr. Haycraft: I object to being interrupted until he has completed his testimony. Then if it is wrong it can be stricken out. It is not in any rule of evidence that I ever heard of that a witness can be interrupted in this manner.

Mr. Weisman: In the first place, it is something that somebody else told him, and that somebody else told him the contents of a writing which has not been shown to be unavailable. Therefore, it is objectionable on two grounds; first, that it is hearsay; second, that it is secondary evidence; thirdly, that the document has been produced, and, fourthly, that no effort has been made to, nor has it been shown to this Tribunal that the document itself is not available to be presented into evidence.

Examiner Bennett: I have repeatedly passed on that question, if it came within his knowledge as

3353 an executive.

By Examiner Bennett.

Q. That is knowledge that you have obtained in the regular and ordinary course of your business? A. By men who reported to me in my business.

Q. In the course of your business? A. Yes, sir; this was a question of policy which had to be decided finally by me as president of the business, and my responsibility to stockholders and others, and in the ordinary course of business by men who came to me with facts as they viewed or saw them.

Those who stated those facts can be put on oath and we can see whether or not they are true. If neces-

3354 sary, the letters themselves can be brought here.

Mr. Weisman: I think his answer is sufficient to justify my objection.

Examiner Bennett: Read the answer of the witness so far as given.

(Answer read.)

By Examiner Bennett.

Q. Had you completed your answer? A. I was going to add that this Commission's Exhibit No. 362, I think it was my letter where we made the reservation.

Mr. Weisman: I shall object to the witness telling what is in the letter. The letter is the best evidence of what it contains. I except to your Honor's overruling my objection. I presume you overruled it?

Examiner Bennett: Yes.

Mr. Weisman: Exception.

3356

By Mr. Haycraft:

Q. I ask you to refer to the letter with regard to the reservation that you have in mind, and state the facts and circumstances to which you now refer?

Mr. Weisman: I object to it as incompetent, immaterial and irrelevant. The letter shows on its face what it contains. This witness' interpretation of it will not be of any benefit to this Court and is merely an interpretation which should be that of that Tribunal and not of the witness.

Examiner Bennett: Overruled. I will listen to what the witness has to say.

Mr. Weisman: Exception.

3357

A. "We do not and will not knowingly sell in our ladies' ready-to-wear departments any copies of pirated dresses of original garments created by any members of your Association. We, however, are to be the judges as to whether garments have been copied or pirated. Furthermore, we propose to annex * * *, and so forth."

Under that we felt we had the right to say whether or not it was a copy, and that again was based on our experience, and the report to me in the regular course of

business by our people that copies in the estimation of the Guild were dresses which had been modified in some way—and, furthermore, that we had made arrangements to confine certain dresses to us with them and then from their own design, if they changed a pocket from the left hand to the right hand, or some small thing like that, and then it was looked upon as not being a copy upon that basis, we wanted to have some say in the matter.

So, we felt that our reservation was desirable, and also for the reason that it is extremely difficult at times to tell what constitutes a copy, as indicated.

3359 Mr. Weisman: I move that all of this testimony with regard to this reservation be stricken out as incompetent, immaterial and irrelevant, not binding upon the respondents, and, furthermore that the answer lacks any coherency and is not capable of a reasonable interpretation.

Examiner Bennett: Yes. I will strike it out from the point "in the estimation of the Guild."

By Mr. Hayeraft.

Q. Did you give the date when you were red carded? A. February 6—my recollection is February 6.

Q. Well, what was the result of the red carding? A. What?

3360 Q. How did it affect your sources of supply, of garments that you had been buying from members of the Guild? A. Absolutely stopped it.

Q. Do you know whether or not at the time that you were red carded you had orders outstanding with members of the Guild? A. We had.

Q. You had? A. Yes.

Q. Are you sufficiently familiar with your business to testify as to the names of the concerns with whom you had orders and the amount of business that you had then pending? A. No.

Q. You are not? A. No.

Q. There are orders, however— A. There are orders, and it can be presented, if you prefer it here.

Q. And there are men who can testify to that, are there? A. There are.

Q. I will ask you if you have made any investigation through your proper, usual, and customary sources of information, and regular sources of information, in your own organization, as to the effect of your inability to get 3362
garments from members of the Guild, upon your business? A. It had the effect of——

Q. No, no, no. My question was whether you have made the investigation. Just "yes" or "no." A. I have.

Q. As a result of that investigation that you have made through your subordinates in charge, as indicated in your previous answers, I will ask you to testify, as president of Strawbridge & Clothier, as to the effect upon your business as a result of your inability to get garments from the members of the Fashion Originators Guild of America, Inc.? A. I——

3363

Mr. Weisman: I object to the form of the question. Even the president of Strawbridge & Clothier is not clothed with omniscience, so that he can say with certainty what it was. If all of the witnesses which are produced here by the Commission are to be clothed with the halo of the Divine Being, then, of course, we are up against the proposition of no small difficulty because I doubt seriously that the Commission is going to grant such omniscience to our witnesses.

For those reasons, I submit that the question is highly improper in its present form, and substan-
3365 tially prejudicial to the rights of the respondents herein. How can we possibly cross-examine upon such broad and sweeping statements as that? How can we possibly give any pertinent rebuttal to it?

Examiner Bennett: I will let him answer. The objection is overruled.

Mr. Weisman: Exception.

A. In so far as its effect on our sales is concerned, which, of course, is more than a matter just of opinion, it is a matter of fact because we can quote it from records in our business, which records can be subpoenaed, if necessary, the immediate effect was somewhat as follows:

The immediate effect to begin with was the loss of 19 per cent. in our better dress business in the month of
3366 February, as against a gain of 9 per cent. in our total business.

In the month of March it was a loss of 10 per cent. in our better dress business as against a gain of 13.2 per cent. in our general business.

In April it was a loss of 11 per cent. in our better dress department as against a gain in our total business of 4.5 per cent.

In May it was a loss of 6 per cent. in our better dress business, or department, as against a gain in our total business of 15 per cent.

In June it was a loss of 1 per cent. in our better dress business as against a gain in the business in general of approximately 10.99 and a fraction per cent.

Q. When you say a loss or a gain, does that mean the per cent. as compared with the previous year's percentage? A. That is for the corresponding month of the previous year.

Q. The previous year? A. Yes.

Q. Was there any other effect besides the effect upon the sales? A. Yes. There was, very definitely, an effect upon 3368
our good will in two ways: First, the way I intimated in the previous answer that the inability of people, as indicated by our figures—that is, a loss to us through their inability to get the better type of merchandise at the same time that other stores were getting this merchandise brought about criticism, a criticism upon our business which we think is very detrimental, because not only were people—did we lose the sale but we lost the reputation of carrying things which we had a reputation for carrying ever since we have been in business.

Q. Did you, during the time that you were co-operating with the Guild, establish, and have you established any department which carried the better line of dresses exclusively? A. Yes. We established a shop called the "Guild Shop." This shop carried exclusively Guild gar- 3369
ments—garments made by the Fashion Originators Guild of America, Inc., of course, and not being able to get those goods that department had to be eliminated—and it was closed.

Q. Now, during the time that you were co-operating with the Guild, did you co-operate to the extent of returning

garments to manufacturers who were alleged to be—which were alleged to be copies of garments manufactured by members of the Guild? A. That information was given me by people in charge of that branch of our business.

Mr. Weisman: I ask that that answer be stricken out so that I may have an opportunity to object and get a ruling of the Court.

Examiner Bennett: Granted.

Mr. Weisman: We find in this an occurrence, I believe, an unfortunate recurrence of this being "alleged." I think my friend and I agreed that we were going to stick to the facts and as to copies
3371 especially there since we have a stipulation in this case which has precluded any interrogation on my prior examination in that regard, and I do not want to widen this scope of examination all over the lot in order to develop that, and therefore I suggest that if he will withdraw the word "alleged," I will withdraw my objection, if he will make the question, "Simply did they return goods."

Mr. Haycraft: The stipulation is just to the contrary; it agrees that we will not go into the question of whether or not they were copies, and that is the reason I used the term "alleged."

Mr. Weisman: Look here, my friend, I am getting a little tired of this. Now, we have the record
3372 and I want to get that record and see what the stipulation is. Turn to the record.

(There was a discussion off the record.)

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

Examiner Bennett: Read the question.

A. We very often, after I am satisfied that on the basis of simply an allegation of being copies, I find that they would be returned. I do not mean by that that we would

simply send them back upon the allegation of being a copy. Our stores had to have proof that they were copies in some way before they were returned. Some of my men might dispute that and that's the reason I made the first part of my answer that I did, but, as a matter of fact—it is a fact that they know more about it than I do. Of course, we did not, upon the basis of just a simple allegation as to being a copy, return them. After proof, which was satisfactory to us, however, they were returned.

By Mr. Haycraft.

Q. In regard to your former testimony as to the effect— immediate effect of the red carding upon the business of 3374
Strawbridge & Clothier, I will ask you whether or not, from your experience in the position which you now occupy, and have been occupying for many years, and the results of the operation of your business in times gone by, and up to the present time, if you have an opinion as to the future effect upon the business of Strawbridge & Clothier, as a result of the activities of the Fashion Originators Guild of America, Inc., as you have observed it and experienced it? A. The men that——

Q. The question is whether you have an opinion as to the future. A. I have.

Q. Will you state it? A. The thing of immediate moment to us, the immediate concern, is the approaching autumn business. From the figures which I have previ- 3375
ously read, you can see that this thing was most hurtful during the spring fashion season. We now face the autumn-fall fashion season. With all of our resources, the best of them will be closed to us, we are very apprehensive of its effect upon our business. We would not be apprehensive if the conditions which ruled our business ruled every other business in the City of Philadelphia, Pa. However, such is not the case——

Mr. Weisman: I object to whether he would or would not be apprehensive.

Examiner Bennett: I will allow it.

Mr. Weisman: Exception.

Examiner Bennett: Granted.

A. I might make the statement that the reason why we are apprehensive is because we know——

Mr. Weisman: I object as to why this witness is apprehensive. Apprehension has not as yet become a fact of evidentiary value or evidentiary substantial in any form whatsoever. If we are going into
3377 the shadows and twilight zones of men's minds where they have apprehensions, speculations, vague emotional eruptions and disruptions, surely this will be the most extraordinary lawsuit that was ever carried on in this or any other country.

Examiner Bennett: He is testifying as to his opinion.

Mr. Weisman: He is now testifying as to his apprehension, Judge, which he says is based upon an opinion and something else.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. Apprehension is built on opinion, I might state in passing.

3378 We are fearful of this because of our experience in the spring season. To meet that, we have been put to more expense already, and we anticipate to being put to more as time goes on if we are to continue to be red carded. We have been obliged—it takes a long while to develop the type of skill which has been developed by our Fashion Originators Guild members, the Fashion Originators Guild members, I should say. We have been obliged already to

make effort from time to time to develop our own resources by subsidizing, by giving them funds, interesting ourselves, indirectly; making loans to them so that they can supply us with these goods which we must have to maintain our position in this city as a first-class store for everything which people want.

The longer this continues, the more it will cost us until the time—and this the Guild should be apprehensive of, probably, if I might use the word—until the time that we have succeeded in developing a sufficient number of manufacturers who can supply the goods which the Guild now supplies.

Mr. Weisman: I would like this admonition to 3380
the Guild be stricken out unless my answer to him also will go into the record, to wit: That when these men have been spending their own money in the development of this kind of high-grade merchandise, then that is something the Guild will never worry about because they had better, Strawbridge & Clothier, worry about it themselves because you will find that when these manufacturers have gone to the expense, time and effort to develop themselves into a first-class manufacturing institution, that they will then be within the Guild.

Examiner Bennett: All right, it may be in the record if that is the idea.

Mr. Haycraft: I merely desire to call counsel's 3381
threat in the record to the attention of the Commission. I think that the Commission will be very glad to know of this threat by counsel.

Mr. Weisman: I only want to say this on the record: That if it is considered an improper threat, by Mr. Haycraft or others, to stop the acts of thieves, of pirates and others of the same stamp, then it may be said to be a threat, if it is a threat

for an honest man to defend himself against thieves and those who consort with thieves, I am quite happy to accept the appellation, otherwise I think the record speaks for itself.

Mr. Haycraft: It seems to be more or less a question of a little pirate and a big pirate than anything else the way you put it.

Mr. Welsman: That is the way you think. Straight thinking goes with straight reasoning, and straight reasoning is what the Guild has been doing. When the time comes that the stamping out of thievery and the conducts of thieves is regarded
3383 as a threat, then I say our entire system has fallen never to rise again.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: Now, if you gentlemen have finished your comments among yourselves, we will proceed.

Mr. Haycraft: I have nothing further for the witness.

Cross-examination by Mr. Weisman.

Q. I believe you testified that you have been president of Strawbridge & Clothier for nine years? A. Yes, sir.

Q. May I ask you before that were you with Straw-
3384 bridge & Clothier? A. Before that for some forty-six years, yes, sir.

Q. Forty-six years? A. Forty-six years.

Q. Then you have been with Strawbridge & Clothier for fifty-four years? A. Fifty-seven years this year.

Q. Thank you. A. Yes, sir.

Q. And you know the personnel and policy of Strawbridge & Clothier under your regime? A. I do.

Q. You do? A. Yes.

Q. And your subordinates, I understood you have said, report to you on all of these matters of policy, and you are the ultimate authority in connection with that policy? A. Major policies.

Q. Major policies? A. Major policies.

Q. I assume you used the word "major" because you knew I had or we had under discussion in this inquiry the matter of your policy with regard to the Fashion Originators Guild of America, Inc.? A. I used it because it is a fact. When I discuss major policies, that is the fact, and that there are policies and decisions as to policy which are related to other matters which are delegated to other experts in our business. 3386

Q. Other experts? A. Yes.

Q. Those matters of your decision with regard to co-operating during the elimination or towards the elimination of style piracy, was this a major policy or a minor policy? A. I think it was very decidedly a major policy.

Q. Therefore, you knew what was being done in connection with it; is that correct, Mr. Tily? A. I knew what was being done in so far as it was reported to me by my men in the regular course of business.

Q. You did? A. Yes.

Q. You are not seeking to hide behind that statement that you knew what was being done in so far as it was reported to you by your men in the regular course of business, are you; you are not trying to hedge or hide behind that statement in any way? A. No. 3387

Q. You are not? A. No.

Q. Let us stay out in the open daylight now and not hide behind anything. A. I will not hide.

Q. Do you mean you were responsible for what was done, were you not? A. What is your question?

Q. You were responsible for what was done so far as Strawbridge & Clothier was concerned, were you not? A. I was, yes.

Q. You admit that? A. It is a fact.

Q. You knew what Mr. Taylor told you and what he did with regard to this policy? A. Generally, yes.

Q. Generally? A. Yes.

Q. You knew what Mr. Frank Smith did? A. Frank Smith?

Q. Yes. A. Generally.

Q. Generally? A. Right.

Q. Did you have a Mr. Clarke with you? A. Mr. Clarke is our publicity director.

Q. Mr. Clarke is your publicity director? A. Yes.

Q. Do you know what he did generally with regard to
3389 this policy? A. No—no, I did not know, generally.

Q. In other words, is it your opinion that Mr. Clarke may have acted independently without consulting the head of Strawbridge & Clothier with regard to this policy? A. Excepting as that authority had been delegated to Mr. Clarke as merchandising manager, or Mr. Smith, as merchandising manager.

Q. Yes. Now, what were Mr. Taylor's duties? A. He was divisional manager, which, in our business, means that he had control of a certain branch of our business and that was confined to the dresses.

Q. What does Mr. Clarke have to do with the business of Strawbridge & Clothier? A. He is now our publicity director and acts in consultation on merchandise matters so far as it affects publicity, and policy, with our Mr.
3390 Smith. The two consult on those matters as well as others.

Q. And he has the purpose, of course—in other words, his purpose was to increase your sales; that is why you have a publicity director? A. Unquestionably.

Q. No doubt about it? A. No.

Q. Now, to call—his duty was to call to the attention of the public, I take it, those things which you bought.

and which you thought might increase the sales of your store by their sale, and other matters which he thought might so increase the sales of your store? A. General promotion of the business, and particularly promotion as it affected that department or departments; yes, sir.

Q. What was Mr. Frank Smith's purpose? A. His position?

Q. Yes. A. General merchandise manager.

Q. I see. Now, we are not merchants and we may not know as much about those terms as you do. Will you kindly explain that to me? A. I might explain that being general merchandise manager—the general merchandise manager is the man to whom the divisional managers re- 3392
port. He is responsible for all merchandising problems in the business, and the arrangements thereof. Reporting to him are divisional managers, and in turn the buyers report to them.

Q. Now, do you know Mr. Bergdoll? A. I—yes, I think I do.

Q. Who is Mr. Bergdoll? A. Yes, he is the general—he has charge of the ready-to-wear division, the merchandise man for the Associated Merchandising Corporation.

Q. And what is your relationship to the Associated Merchandising Corporation, and when I say "your," I mean the firm of Strawbridge & Clothier? A. Pardon me.

Mr. Haycraft: All of this is objected to as not 3393
being proper cross-examination, incompetent, immaterial and irrelevant. Mr. Examiner, this was not gone into on direct examination at all.

Mr. Weisman: Mr. Examiner, this is a foundation question to show what their general policy was, and how it was arrived at.

Mr. Haycraft: I object to that, if your Honor please. There is no basis for such examination as

this. No question was asked this witness with respect to the American Merchandising.

Mr. Weisman: I don't have to confine myself to questions that you asked. I am constantly met with that peculiar type of objection. I didn't ask about that; therefore, you can't—I may be asking about this, "Does this prove something else that you asked about."

Examiner Bennett: I am not going into that Association business to any extent.

The Witness: We are members along with some other nineteen stores.

3395 *By Mr. Weisman.*

Q. And are some of the purposes for which you are members that you may co-ordinate, so to speak, your policy with other stores?

Mr. Haycraft: Same objection, Mr. Examiner, to this.

Examiner Bennett: I will let him answer. Overruled.

A. Co-ordination of policy, no, not on co-ordination of policy.

By Mr. Weisman.

3396 Q. Well, what then? A. Policies are discussed. Each store is absolutely independent and comes to its own decision as to what its policy is.

Q. Yes, but your policies are discussed with Mr. Bendoll in connection with merchandising of dresses? A. Details of purchasing and things having to do with merchandising, yes, which includes in some cases policy matters, yes.

Q. Yes. And from time to time did you discuss your policy with regard to the Fashion Originators Guild with Mr. Bergdoll? A. They were discussed by our people.

Examiner Bennett: Are you objecting?

Mr. Haycraft: To that? I am objecting to all questions relating to Mr. Bergdoll.

Examiner Bennett: I sustain the objection.

Mr. Weisman: Your Honor's hearing is much better than mine, although I sit much closer to Mr. Haycraft than does your Honor. I didn't hear the objection.

Examiner Bennett: I didn't hear it, either.

Mr. Weisman: I thought that your Honor heard 3398
something that I couldn't.

Examiner Bennett: I was asking him if he was—I think we have gone as far in this direction as is useful to us.

Mr. Weisman: I respectfully——

Examiner Bennett: All right.

Mr. Weisman: —except.

Examiner Bennett: Note an exception.

By Mr. Weisman.

Q. Did Mr. Bergdoll, from time to time, express with your knowledge to the Guild your attitude to it or towards its policies and activities?

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Mr. Haycraft: Same objection.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

I make this offer of proof: If the witness were permitted to answer that question, I would show that Mr. Bergdoll, from time to time acting for and on behalf of Strawbridge & Clothier, did communicate with us and discuss the policy of the store

towards this matter of protection of original styles of members of the Fashion Originators Guild.

I respectfully except to your Honor's refusal to allow me to go into that matter.

Examiner Bennett: The offer is irrelevant on its face in view of the testimony of this witness.

By Mr. Weisman.

Q. Well, as a matter of fact, didn't your store write a letter to the Guild authorizing Mr. Bergdoll to act for and on its behalf with the Guild? A. It did.

Q. Have you a copy of that letter here? A. No.

3401

Mr. Weisman: Now, your Honor sees how vitally I have been injured by your Honor's ruling.

Examiner Bennett: What has that to do with the issues in this case?

Mr. Weisman: We will show what Mr. Bergdoll's avowed representative, what their expression of policy was towards this.

The Witness: I might help you, if you are hunting for that letter, if you want me to. I didn't—I have rather indefinite recollection of it.

Mr. Weisman: We have a copy of it here. We will produce it.

Mr. Haycraft: What of it? I am objecting to it, Mr. Examiner; as not being proper cross-examination.

3402

Mr. Weisman: I mean, this is pretty indicative of your present course. You are objecting before you see what we are offering, and you did that once before.

Mr. Haycraft: I am objecting to the entire line of examination with respect to Mr. Bergdoll. If they want to put Mr. Bergdoll on the stand to testify as to what he did, that is all right.

Mr. Weisman: I wouldn't want to put Mr. Bergdoll on the stand.

Mr. Haycraft: It is not proper cross-examination?

Mr. Weisman: I am cross-examining him.

Mr. Haycraft: I suggest that counsel refrain from addressing the Examiner while I am addressing the Examiner. Common courtesy asks for that; requires it.

I say, if they want—if counsel for the respondent wants to put Mr. Bergdoll on to prove certain things as to what Mr. Bergdoll may have done it is perfectly all right when the time comes. It is certainly 3404
not proper cross-examination as to this witness as to the matters which I interrogated him on direct.

Mr. Weisman: May I have the last question?

(Question and answer read.)

By Mr. Weisman.

Q. And by that letter you wrote, did you not——

Mr. Haycraft: Objected to. Reading from an exhibit, from a letter which is not in evidence.

Mr. Weisman: I haven't. Now do you know I am reading?

Mr. Haycraft: Oh, well.

Mr. Weisman: Are you another mind reader. Now the lawyer can read minds. 3405

Mr. Haycraft: The question shows that you are reading.

Examiner Bennett: Ask your question.

Mr. Weisman: Will you instruct counsel not to interrupt my questions?

Examiner Bennett: Go ahead and ask your question and let's have this hearing——

Mr. Weisman: May I have the question to the point where I was interrupted?

(Question read.)

Mr. Haycraft: You see, Mr. Examiner, he is reading from an exhibit. He is reading from an exhibit which is not in evidence. I object to the reading from that letter.

Examiner Bennett: You can question him until doom's day on that association and you won't get one answer in the record. I have told you that to begin with, and that line is shut off. I let you develop the trend of it before I shut you off, and I
3407 am not going to listen to any answer to any question you may ask. Of course, you may ask questions if you want to waste time.

Mr. Weisman: Of course, your Honor perhaps misconceives the purpose of, at this time, the asking of these questions. At the proper time I will show what the A.M.C. is and how it operates, and so forth and so on, but that is not the purpose of asking this witness this question. This witness has testified that a Mr. Bergdoll was his accredited representative to deal with the Guild. Now, I want to fix that irrespective of whether or not the A.M.C. was good, bad or indifferent, whether in itself it was a monopoly or whether it depressed or injured the
3408 manufacturers. That is not the purport of this question. It is to prove from this witness that he authorized Bergdoll to act for and on his behalf so that we may, in cross-examination of this witness submit what Bergdoll did for and on behalf of this store. And I submit I should be entitled so to do.

Mr. Haycraft: I object to that. That is just the reason why I am objecting to all of this line of examination. What Bergdoll may have done is irrelevant and immaterial to this witness' testimony and not proper cross-examination.

Examiner Bennett: Yes. I think that it is beyond cross-examination. It may be proper at the time, but the proper time hasn't come.

By Mr. Weisman.

Q. Do you know Mr. Charles G. Taylor? A. Yes.

Q. I show you this signature—I will withdraw that. Have you ever seen his signature?

Mr. Haycraft: I object to the question. I object to the portent on the part of counsel for the respondent to evade and avoid the ruling of the Examiner by now showing to the witness a paper signed by another man and addressed to Mr. Bergdoll to bring out the very things about which I have been objecting to right along. 3410

Mr. Weisman: Judge, there isn't a single fact in his statement.

Mr. Haycraft: Not Mr. Bergdoll ——

Mr. Weisman: Again he is trying——

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

I make this offer of proof: That if I had been permitted to ask this question the witness would have stated that he recognizes and has seen the signature of Mr. Charles G. Taylor, whom he has before identified as his divisional merchandise manager. 3411

The Witness: Former divisional merchandise manager at the time.

By Mr. Weisman.

Q. Yes. Former divisional merchandise manager.

Mr. Weisman: And I respectfully except to the ruling.

By Mr. Weisman.

Q. I show you this signature and ask you whether or not you recognize that as the signature of Mr. Taylor?

Mr. Haycraft: It is the same question and the same objection.

Examiner Bennett: Sustained.

Mr. Weisman: May I ask upon what theory your Honor sustains these objections? Your Honor doesn't even know what I am going to prove. I am trying to prove——

Examiner Bennett: Sustained. Let me see these
3413 papers?

Mr. Weisman: What?

Examiner Bennett: Let me see these papers?

Mr. Weisman: You said, "Let me see these?"

Examiner Bennett: Yes.

(The paper referred to was handed to the Examiner.)

Examiner Bennett: Sustain the objection.

Mr. Weisman: Exception.

And now I ask that this letter be marked for identification.

Examiner Bennett: It may be marked for identification the next respondents' exhibit.

(Letter from Strawbridge & Clothier, under date
3414 of December 28, 1935, was marked for identification Respondents' Exhibit 16.)

By Mr. Weisman.

Q. Do you know whether or not prior to February, 1936 Mr. Bergdoll had been acting as—Mr. Bergdoll, in New York, had been acting as your representative in connection with your transactions with the Guild? A. In a qualified way.

Q. And for how long was he so acting in such qualified way? A. At the time that we authorized him to do it, which I don't know exactly when it was.

Q. Well, how long, Mr. Tily? A. Well, if I knew I would tell you.

Q. What is your best recollection? A. Probably from the time we had the notification as for the change of policy until the time of the red carding, but he was not solely our representative. He was a representative in a qualified way. My recollection was that——

Q. We understand you have so testified. Now, how long had he been your representative in a qualified way? A. From the time that thing was under question. My recollection is that I wrote—may I have—I have some papers here. May I refer to them? 3416

Q. Why, certainly. A. My recollection is that it was not very long. I may be wrong in that, but this is very definitely a fact: We were—we were told some time in the early part of February——

Q. No, wait a minute. I guess you have forgotten my question was— A. Yes, I will answer you.

Q. How long had he been acting in a qualified way? What is your best recollection? A. I am endeavoring to find out. I think I will endeavor——

Q. No. I don't want your thoughts out loud because I can't tell whether you are giving us the correct thoughts or all of them out loud. The Examiner does not permit the witness to think out loud. He only permits him to answer out loud. Now, you can answer me as loud as you want, but I want an answer. I said, What is your best recollection of the time during which Mr. Bergdoll was acting as your qualified representative, a representative with qualifications? A. My recollection is that it was a short time before the writing of this letter (indicating). 3417

Q. Well, what letter was written? A. The letter was written that we had been giving care and consideration to

their letter of February 4. It has been "thoroughly discussed by our merchandising organization. Will you be good enough to answer the following questions as your declaration of the co-operation which has been signed by other merchants?"

"Are you willing to tell us who they are and what proportion of the better element of the craft they represent? On receipt of this information we shall be glad to give the matter further consideration as it is our endeavor to act in consonance with the majority of the better retailers of the country."

Q. When was that letter written? A. February 6.

3419 Q. February 6?

Examiner Bennett: What year?

The Witness: 1936.

By Mr. Weisman.

Q. Now, would you say it was only from that time that Mr. Bergdoll was authorized to act as your qualified representative? A. My recollection is that we wanted him, and so notified——

Q. No. Now, please. A. Yes. My recollection is that you were notified that we had authorized him to find out some of these facts which we asked for here.

Q. Mr. Tily, you evidently have forgotten the question. You have still not answered my question or understood my

3420 question. I will ask it again. I said to you: Is it your best recollection, as head of Strawbridge & Clothier, with your complete knowledge of its policies, that Mr. Bergdoll was not authorized to act as your representative in a qualified way before February 6, or is it your recollection that prior to then you had already authorized him to act? A. Prior to then, but just how long I do not know.

Q. Now, I am asking you to give me your best recollection of how long prior to them it was, whether it was a

month or three years or two years or six months? A. My recollection——

Q. Do you have any recollection of that? A. My recollection is, as I have just told you, that it was a short time before this trouble, this new thing.

Q. What do you mean by a short time? A. Well, a short time—in my mind, a short time—now, a short time is relative; isn't it?

Q. I am asking the questions. You are giving the answers. A. A man's lifetime compared with eternity is short. It is so relative.

Q. Did you mean when you said a short time that you meant he had been authorized for a short time, when you 3422
compare the time that he was authorized to all eternity; is that what you meant? A. Not unless you——

Q. Then what did you mean? I am trying to find out from you what you meant when you told me he had only been authorized for a short time. A. I can only make a guess as to the exact length of time.

Q. Well, what is your best guess?

Mr. Haycraft: I object to guesses.

Mr. Weisman: I would like to see how the head of this business guesses about his representations, and I submit it is a proper item of cross-examination on the credibility of the rest of his testimony.

By Mr. Weisman. 3423

Q. Now give us your guess, then?

Mr. Haycraft: I object.

By Mr. Weisman.

Q. If that is the best you can do as the head of this business?

Mr. Haycraft: I object to the guess, Mr. Examiner, and the fact that he is the head of this business is a reason why he should not know the details of such things as that. Naturally, as the witness has already said, it is anyone's common knowledge that a president of an organization of this size is not familiar——

Mr. Weisman: Are you trying to justify him or tell him not to answer?

Examiner Bennett: Just a moment.

Mr. Haycraft: —is not familiar with all of the details of the business. I object to any further
3425 questioning on this length of time. The witness has said he doesn't know and he apparently hasn't any recollection. I don't think he ought to be further badgered about it.

Examiner Bennett: Why can't you give it to us without a guess?

The Witness: I am under oath, as I was reminded a little while ago.

Mr. Weisman: Did you need the reminder?

The Witness: No, I didn't need the reminder. I——

Examiner Bennett: You were not familiar with those details?

The Witness: I was not familiar with their—no, not familiar with all details. My recollection is
3426 that it was a short time, and a short time can be—I would say some time, a short time would be between the 1st of January, possibly, and the time of our red carding.

Examiner Bennett: That is, this year?

The Witness: This year.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Do you remember a conference that was had between yourself and Mr. Taylor concerning the authorization to Mr. Bergdoll? A. Yes.

Q. When was that conference? A. That I do not remember. It was during—I can say this: It was during the time between the issuance of the new policy and the time of our red carding.

Q. You said that Mr. Bergdoll was to act as your qualified representative. Was that correct? Do I quote you correctly? A. Yes.

Q. What do you mean? What qualifications did you mean when you used the word "qualifications"? A. Limi- 3428
tations.

Q. Restrictions or limitations? A. Yes. Well, my recollection was, and that is my——

Q. Well, what would the limitations— A. The limitations, as I understand it, as I recall it, were to examine the records and see how many merchants had signed, because they had made—they had replied, that is, several thousand. Just who they were we were anxious to find out who they were. And the authorization, the correct authorization I made was that Mr. Bergdoll would get that information for us. That was the limitation, qualification I had in mind.

Q. Did you give that qualification to Mr. Bergdoll? Did you tell him that he was limited in his representation 3429
of you?

Mr. Haycraft: That is objected to.

A. No.

Mr. Weisman: I want——

Examiner Bennett: He may answer.

Mr. Weisman: The Court says you may answer.

A. I don't recall that.

By Mr. Weisman.

Q. Did you tell the Guild that Mr. Bergdoll, in his representation of you, was limited?

Mr. Haycraft: Same objection.
Examiner Bennett: Same ruling.
The Witness: Don't recall that.

By Mr. Weisman.

Q. Well, do you—you sent him forth as your representative; didn't you? A. In the qualified way in which I have spoken of.

3431 Q. How did the people who were to deal with him know that he was acting in a qualified way rather than in an absolute way? That is what I am trying to find out from you. A. I don't know how they would know it.

Q. How? A. That is something that they would have to testify to, how they know.

Q. Didn't you think that if you were sending somebody out as a limited representative, the person who he was to deal with should be notified by you of the fact that his representation of you was limited?

Mr. Haycraft: Same objection.
Examiner Bennett: Overruled. He may answer.

By Mr. Weisman.

3432 Q. I think the purport of the question was whether or not you divulged to the Guild at any time the fact that Mr. Bergdoll's representation of Strawbridge & Clothier was a limited one. A. I did not.

Q. When you say, "I did not," do you mean that somebody else did? A. I have no knowledge that anybody else did.

Q. So, in other words, in so far as you know, notwithstanding the fact that you have testified here that Mr.

Bergdoll was your representative in a limited fashion, or with restrictions, yet such restrictions were nevertheless conveyed to the Guild? A. I have no knowledge that they were so conveyed.

Q. But you have knowledge that you notified the Guild, have you not, that he was your representative? A. I have a knowledge, yes, that I notified the Guild.

Q. What? A. Either directly or indirectly. My recollection is that he was to get this information for us of which——

Q. Wait a minute. You say "my recollection is either direct"—haven't you a recollection on whether or not you personally notified the Guild that Mr. Bergdoll was to act as your representative with the Guild? A. I have my recollection; my sole, definite recollection is that he was to find out for us. 3434

Q. No. That isn't what I asked you. Listen to the question: I want to know whether or not you have a recollection that you personally notified the Guild that Mr. Bergdoll was to act as your representative? A. I did not personally; not to my recollection.

Q And that is your best recollection? A. Except in this qualified way.

Q. No. No. Is that your best recollection, that you never personally notified the Guild that Mr Bergdoll was to act as your representative? A. Except in this qualified way. My personal recollection is that I, in trying to develop a reason for going along, if we could, that he was to examine certain records for us. 3435

Q. No. No. You still don't answer my question and it is a very simple one.

Mr. Haycraft: He has answered it.

Mr. Weisman: Please don't interrupt me. The Court knows whether I am right or wrong, and it doesn't need your assistance.

Mr. Haycraft: Mr. Examiner, I object to any further interrogation on this point. The witness has said that he did not have a personal recollection of notifying the Guild. Now, that to my mind is a fair and complete answer.

Mr. Weisman: Let me ask him, if you heard that.

Mr. Haycraft: You have already asked him that question three or four times.

By Mr. Weisman.

Q. Let's see. You made a statement——

3437 Mr. Haycraft: Go back in the record.

By Mr. Weisman.

Q. Did you testify that you have no personal recollection of having personally notified the Guild that Mr. Bergdoll was the representative of Strawbridge & Clothier? Did you so testify?

Examiner Bennett: I will sustain the objection to a question of that kind.

Mr. Weisman: All right.

By Mr. Weisman.

Q. Now, you did testify that you have a recollection of
3438 things which transpired, I believe, in 1932; you said in the winter of 1932; and you testified as to your recollection of conversations that you had, state you had in 1932 isn't that so? A. Conversations?

Q. Didn't you testify on direct examination that you had certain conversations with Mr. Post? A. That I had certain conversations?

Q. Yes. A. I did not so testify.

Q. Well, let me ask you. Did you state that you had a recollection that you received letters from Mr. Post in the autumn or winter of 1932? A. Yes.

Q. On behalf of the Guild? A. Yes.

Q. You have given that as your recollection? A. Yes.

Q. And notwithstanding your testifying from your recollection you cannot remember by that same recollection whether or not you personally notified the Guild in February, 1936, that Mr. Bergdoll was your representative; is that so? A. That is so, except in the qualified way of which I have spoken.

Q. Is this your signature, Mr. Tily (indicating)? A. Yes, that is the letter, I recall. 3440

Mr. Weisman: I offer that for identification.

(Letter from Strawbridge & Clothier, Philadelphia, under date of February 8, 1936, to Mr. Albert M. Post, Executive Director, Fashion Originators Guild of America, Inc., 512 Seventh Avenue, New York City, was marked for identification Respondents' Exhibit 17.)

By Mr. Weisman.

Q. Did you send that letter to the Guild on February 6, 1936? A. I did.

Q. You now recollect it? A. Yes.

Q. When you see it? A. I thought that was a qualification in it. I know the reason—— 3441

Q. You said you thought there was a qualification? A. Yes. It was based on a letter received from Mr. Post to examine certain records for us.

Q. Didn't you testify— A. That is the qualification.

Q. Didn't you testify before that there was a qualification? Didn't you testify to that? A. Yes; there was a qualification, yes.

Q. There— A. Not in the letter.

Mr. Weisman: I offer the letter in evidence. Do you want to see it?

Examiner Bennett: You may have an exception. That letter is not intelligible as it stands.

By Mr. Weisman.

Q. I show you Respondents' Exhibit 17 for Identification, referred to therein (indicating). You refer to a letter of February 7. I ask you whether or not this copy of a letter of February 7 is the letter therein referred to? It had with it this other sheet (indicating). A. I remember receiving it.

3443 Q. And that is the letter of February 7, 1936, referred to in your letter of February 8; is that right? A. Yes.

Mr. Weisman: I now offer both in evidence.

Examiner Bennett: It is Commission's Exhibit 364 for Identification.

(Copy of letter from President, Strawbridge & Clothier, under date of February 6, 1936, to Mr Albert M. Post, Executive Director, Fashion Guild Originators of America, New York, N. Y., was marked Commission's Exhibit 364 and received in evidence.)

(Letter from Strawbridge & Clothier, heretofore marked for identification Respondents' Exhibit 17, 3444 was marked as an exhibit and received in evidence.)

(Copy of a letter from Albert M. Post, Executive Director of Fashion Originators Guild of America, Inc., under date of February 7, 1936, to Herbert J. Tily, Strawbridge & Clothier, Philadelphia, Pennsylvania, was marked Respondents' Exhibit 18-A and received in evidence.)

(Summary of a few of the 11,000 stores which have indicated their desire to co-operate with the Fashion Originators Guild was marked Respondents' Exhibit 18-B and received in evidence.)

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Mr. Weisman: Judge, we are now finished with this particular line of inquiry, and I notice it is 12.30 o'clock.

Examiner Bennett: All right. We will adjourn until 2 o'clock.

(Whereupon, at 12.30 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.) 3446

AFTERNOON SESSION, 2 P. M.

Examiner Bennett: Be in order, please. You may resume, Mr. Weisman.

By Mr. Weisman.

Q. Now, Mr. Tily, Strawbridge & Clothier, you have testified, is a large institution? A. (Witness shakes head in the affirmative.)

Q. The stenographer cannot hear you if you cannot speak. You just shook your head. Would you please answer? A. It is. 3447

Q. You are the head of that institution and in charge of its policies? A. I am.

Q. May I ask you—and no implication is intended by the question—whether or not as the directing head of that institution it is a policy of your store to keep the promises or commitments they make to the people with whom they do business? A. Absolutely.

Q. There is no question about that? A. No question.

Q. May I also ask you whether or not you understood that you were doing business with the various members of the Fashion Originators Guild? A. That's true.

Q. And may I also ask you whether part of your policy—and no implication is meant by this question—was to be truthful and straightforward with them? A. Yes, sir.

Q. And you, as a member of this large institution, also had a sense of responsibility to your institution, as such, and to your stockholders and board of directors, as you have testified on direct examination? A. That is quite so.

3449 Q. Now, you would not, I take it, then, in the ordinary practice and performance of your duties, write to your customers a statement which was untruthful, would you? A. Not if we knew it to be so.

Q. And, if you made a statement at that time when you wrote any particular letter, it was the truth when you made it? A. So far as we knew.

Q. And I also take it that if the statements you made at a prior time are at variance with any of your present recollection, you would like to correct that testimony? A. That is so.

Q. May I ask you whether or not, as the head of this business, and as the directing person in charge of its policies, it was your practice to hide anything from the
3450 people you were doing business with which was of interest to your company to disclose? A. No.

Q. In other words, then, I take it that if your company might be injured by a course of conduct, and that conduct was persisted in by anybody with whom you were doing business, as part of your duties to your company, and your stockholders, you would seek to change that? A. Quite correct, sir.

Q. Now, your position is a responsible one? A. It is.

Q. And you fully realize its responsibilities? A. I do.

Q. Now, in Commission's Exhibit 362, you wrote to the Fashion Originators Guild, over your signature, the following: "We understand that the members of your organization have decided to confine the sale of their individual merchandise to such retailers as by their conduct indicate their business policy to be that they will recognize the property right of manufacturers in styles created by them, and will refuse to countenance so-called style piracy." Now, that was true, was it not? A. Yes, it was.

Q. Now, in this position that you maintain, when you wrote that letter you were exercising your functions as head of this large institution? A. I was.

Q. And when you wrote in that letter concerning the 3252
recognition of a property right of the manufacturers, you knew what you were writing about, did you not? A. Yes.

Q. You are not in the habit of signing letters over your signature, and on the stationery of Strawbridge & Clothier, without any knowledge of what you are writing about? A. No.

Q. Your duties compel you, or impel you, I would rather say, to be a well-informed, conscientious and honest executive; is that not so? A. That is so.

Q. And, as such well informed, conscientious executive, did you, when you wrote of the property right of the manufacturers in the styles created by them, know what you were talking about? Did you? A. Not from my knowledge of dresses, no.

Q. In other words, this letter is an example where you 3453
wrote a letter and used a lot of words, the meaning of which you did not know anything about? A. No, it is not so.

Q. Well, did you know of the property right of manufacturers in their style organizations? A. I knew; I did not know that they had a real property right, legally.

Q. But did you know of a moral property—well, I will withdraw that. There is no implication in this question: In the conduct of your business and as the executive head of so large an institution as this is, in the conduct of your business do you recognize moral as well as legal observations on the people with whom you do business? A. Moral, ethical and——

Q. Moral and ethical? A. Moral, ethical and legal, or all of them.

Q. When you refer to the property right of manufacturers in their styles created by them, I take it that you felt that there was a moral property right which they had?

3455 A. That is correct.

Q. Now, this was a moral right in that you felt that these people had created something which the law in its present state, did not give them the right of protection in regard thereto; is that it?

Mr. Haycraft: That is objected to as irrelevant and immaterial: not in this case.

Mr. Weisman: I submit it is rather important Judge.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Well, I take it this way, then, that at that time you

3456 felt that you morally ought to protect such property right as you morally felt they had in the style originations?

Mr. Haycraft: Same objection.

Mr. Weisman: Oh, I submit that is perfectly—

Examiner Bennett: Well, I will overrule that.

By Mr. Weisman.

Q. The Court says that you shall answer. A. Morally, yes.

Q. Yes. You also wrote as follows: "Believing the principles declared by your members"—now, before you wrote that you believed the principles, you knew what the principle was, did you not? A. It was the protection of any moral right a man might have.

Q. And when you wrote this letter you, by using the words "believing the principle," wanted to convey to these people with whom you were doing business that you had a firm belief in that principle; is that not so? A. Believing in—firm—you have introduced firm, because my letter has a qualification in it.

Q. Well, I am coming to that. A. That is the reason that I did not want——

3458

Q. Well, you— A. I believed in it.

Q. You wanted them to know that you believed in the principle. A. Yes, yes.

Q. And you said that you furthermore believed the principle to be proper for the protection of the public. Now, that was true, too, was it not? A. Absolutely true.

Q. You were not seeking to parade under a sanctity? A. No——

Q. Or a moral tone that was not a fact, were you?

Mr. Haycraft: Objected to on the same ground.

Mr. Weisman: This man says in this letter that he believes this is for the benefit of the public, and I want to know whether he is truthful in that statement. I submit it is entirely proper cross-examination both as to fact and as to the credibility of the witness.

3459

Mr. Haycraft: The letter speaks for itself.

Mr. Weisman: No, but I want him to speak for himself. A man may write anything. I want to find out whether he is truthful when he wrote it.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: You may answer if you have any answer.

A. Not seeking to parade, no.

By Mr. Weisman.

Q. In other words, when you said that this policy of the Guild was a protection for the public, you honestly believed it and meant it; is that not so? A. Yes.

Q. And I also understood you to say that before you acquiesced in this policy and came to this conclusion, you had discussed it with your Mr. Taylor, who was your divi-
3461 sional manager, and your Mr. Smith; is that not so?

Mr. Haycraft: What is that question?

A. If I did state it it is in the record——

Mr. Haycraft: What is the question?
(Question read.)

A. That is correct.

By Mr. Weisman.

Q. That is correct? A. Yes.

Q. And it is so correct not only that you so stated on your direct examination, but it is correct in fact, is it
3462 not? A. That I discussed it, absolutely.

Q. Now, so that the sentiments expressed in this letter therefore represent not alone your sentiments, but the sentiments combined of Mr. Smith and Mr. Taylor; is that not so? A. As to—yes. As to the moral significance, they are not our words, you know; they are yours.

Q. No. A. They are yours.

Q. You signed this letter? A. Yes—they are your clients' words.

Q. Yes, and—well, you would not, as the head of this company, Mr. Tily, sign a statement on the letterhead of Strawbridge & Clothier, with your own personal signature on it, unless it was true, would you? A. No.

Q. So it was true? A. Yes.

Q. Now, you also wrote that this policy was properly for the protection of the public, for the retailer; that was you, is that not so? A. That is right.

Q. In other words, this policy was also for your protection? A. Yes.

Q. And you also stated it was for the protection of the manufacturer? A. Correct.

Q. You also stated in this letter the following: "We 3464
wish to go on record"—referring to the foregoing—"as stating our fixed business policy," is that so? A. It is there; yes, sir.

Q. Then you stated that your fixed policy would be as follows: "We do not and will not knowingly sell in our Ladies' Ready-to-Wear Department any copies or pirated dresses of original garments created by any members of your Association." A. That is the statement.

Q. Now, that was an honest statement? A. Honest statement.

Q. Now, I take it, or may I take it, from this letter, that you were not going to do that because you recognized the property right of the manufacturer in his original design? A. And——

3465

Mr. Haycraft: I object.

Q. And that also——

Mr. Haycraft: Just a moment.

Mr. Weisman: I will withdraw my last question.

By Mr. Weisman.

Q. Now, as the head of——

Mr. Haycraft: Objected to.

By Mr. Weisman.

Q. —of this large institution in this grand metropolis which we are now visiting, you recognize, do you not, a duty to the public? A. We do.

Q. And you are ever mindful, in the conduct of your business, that it is part of your duty to honestly fulfill that duty to the public? A. Quite so.

3467 Q. And when you wrote this letter that you wrote, you meant to convey, did you not, in words or substance, that this style protection of original design was properly for the protection of the public? A. Quite correct, sir.

Q. And you believed it to be for the protection of the public; is that so? A. That is so.

Q. Now, in the practice of your business, as the head of this business, are you, to the best of your ability, ever mindful for the accomplishment of those things which will best serve the public, best serve your store's interest and best serve the interests of those with whom you do business? A. That is our——

Q. And is that your complete aim? A. Our complete aim.

3468 Q. This letter was honest? A. Honest.

Q. Honest? A. Yes.

Q. If that was so, will you tell me why on your direct examination at the hands of Mr. Haycraft you testified that the greatest reason that you joined the Guild was because you were forced to do so, or words to that effect? Does anyone ever have to force you to do that which is best for the public, best for the persons you do business with and best for your own store?

Mr. Haycraft: Objected to as a double question. I think we had better take them one at a time.

Mr. Weisman: Very well. We will take them one at a time.

Examiner Bennett: Overruled. I shall let the witness explain. If counsel desires to ask the question serially he may do so.

By Mr. Weisman.

Q. You may answer? A. What is the first question you want me to answer?

(Question read.)

3470

Examiner Bennett: Are you contending that that is the only reason he gave?

Mr. Weisman: He said that that was the greatest reason. His testimony was that the greatest factor which they took into consideration was that, and then he repeated that and said that the determining factor was that, and furthermore, and so forth and so on.

By Mr. Weisman.

Q. Please give your answer to the question. A. The determining factor was that because of the conditions which existed at that time—everything which I have answered I answer again as to the affirmative as to honesty of purpose, and so forth.

3471

It is a question of ability to do it. We may want to be as right as—we always want to be right. There are certain definite impossibilities at times, although you may try very hard to be correct. You may try to do right. We have tried to avoid being unfair with manufacturers' rights and others constantly in the prosecution of our business. Away from the determining factor, why, we

felt it was impossible to—we felt it was impossible—however, we had no objection—we had to go along with you although we agreed with the principles.

Q. We will come to that later.

Mr. Haycraft: Let the witness complete his explanation.

By Examiner Bennett.

Q. Have you finished your answer? A. No, sir.

Q. All right. Please proceed with your answer. A Will you please read my answer as far as I have given it?

3473

(Answer read.)

A. The one—the fact that one has sought to be honest is simply a question that entered into it. As to which was the finally determinative question with us which made us act is another thing. We tried our level best to weigh this thing.

Q. I do not believe I understand that answer very well. Do you understand the question? A. Yes, I do. I was just making a comment there.

We are in favor of anything that can be done. There is no law supporting property rights. There is a law supporting discrimination and the discrimination was the thing which made us feel it was impossible to carry the thing out, as has been proven in our judgment.

3474

Mr. Weisman: I ask that that part be stricken out as to what has been proven in their judgment.

Examiner Bennett: Motion granted.

A. Well, the fact which finally satisfied us, in our desire to be fair with the public and the manufacturer—although we felt it was impossible as a thing to carry out

successfully—we felt that trouble would ensue, for various reasons, among which is one as to what constituted a copy, and that is why we put that reservation in our letter in regard to the decision in regard to copies because we felt that it was matter with which we should have something to say about when the determinations as to what copies were came up—but the Court is aware of that—however, the great fear was the fact, which has since proven to be a fact——

Mr. Weisman: I object to that.

A. —which we believed was the fact, which we believed to be the fact and what our investigations seem to indi- 3476
cate, it was a fact, is that when it has no universal application, as a patent right applies, it could not be carried out.

So that the determinative factor was in view of the monopoly which you folks deservedly had because of the great skill in your designs, because of your mnaufacturing ability which you had, we felt we had no other recourse. And in adopting your principles we were adopting principles in which we firmly believed, but we felt there was no protection to the honest man, and we believed that that is a fact and, consequently, the honest merchant, the man who would keep his agreement, the man who could conscientiously keep his agreement, we felt there was no arrangement made whereby the dishonest merchant, or the 3477
merchant who was not a party to this agreement, could be held to keep his agreement. We felt, therefore, that there was no agreement which was universal in its nature, and we further felt that there was a distinct necessity for a protection to go beyond such a few; that it was a necessity for the protection of everybody, the manufacturer, the merchant and the customers, because, for instance, our customers have other rights except the right to a dress

which is an individual dress. They have rights in so far as costs are concerned. The customers have rights so far as many, many other things are concerned. We have rights, too, in that regard; competition brought out through discrimination between the right merchants and the other fellow who does not sign this agreement, because that discrimination works such a hardship.

So we felt we wanted to be right and still do, and we wanted to do right then and we want to do right now, and if you can show us a way that we can be protected in buying our goods, so we can be protected in being right and so you do not serve anybody—I repeat, anybody except
3479 those who have signed your agreement, why, we will—

By Mr. Weisman.

Q. (Interposing) In other words, you think that the only trouble with this program is that it is not universal enough; is that so? A. It cannot work unless it is universal.

Q. You just said that if the members of the Fashion Originators Guild of America would not sell anybody—and you emphasized "anybody," and you repeated it, you said it twice, except those who signed up and lived up to the pledge, that then it would be all right; did you just say that? A. I did.

Q. And is that the fact? A. It is.

3480 Q. Do you not know, as a matter of fact, that that is the very thing that the Fashion Originators Guild of America, Inc., did; namely, that it refuses to sell to anybody that did not recognize property rights in style originations; do you not, as the president of this concern, this great concern of Strawbridge & Clothier, do you not know that? A. No, indeed. I know something, or I seem to know the contrary.

Q. What? A. I seem to know the contrary.

Q. In other words, if the contrary is not true, if it should develop that the Fashion Originators Guild cannot and will not sell—the members of the Fashion Originators Guild, Inc., will not sell its merchandise to anyone except those who will protect original fashions, then you, with your large merchandising experience behind you, and I bow to it—I mean that sincerely—would you say that its program is good; is that so? A. If it is workable; yes, sir.

Q. And good? A. Well, in view of what I think, yes, good.

Q. In view of what you think, it is good; what do you think about it? A. Well, it is good. 3482

Q. Would you say it was good? A. Good. Good. Good.

Q. Would you say it would be good for you? A. Yes.

Q. Would you say, then, it would be good for the public? A. Yes.

Q. Would you say that it would be good for the manufacturer? A. Yes, I would say so.

(At this point a party entered the court room and handed the witness a document.)

Q. What is this, this is something new and novel to me. What is that he handed you? A. This is a copy of that letter. This is a copy of the letter of February 7. I want you to see it.

(Witness hands document to counsel.) 3483

Q. I will look at it in a moment. A. Yes. Do so.

Q. Then it would be good for the manufacturer; is that so? A. Unquestionably.

Q. Then it would be good for the retailer? A. Unquestionably.

Q. Then, being good for the manufacturer, retailer and consumer, it is pretty nearly good for all concerned because those are all that are concerned; is that so? A. Correct.

Q. Now, by this letter signed by you as president, you also stated on June 30, 1933: "Furthermore, we propose to annex to all of our orders for ladies' ready-to-wear merchandise, the following clause: 'This order is placed upon the seller's warranty that the above garments are original styles, created by the seller, unless identified by this order as a replica of foreign style creations. The purchaser reserves the right to return any merchandise which is not as warranted.'" Was that put upon all of your orders? A. Yes. That has been put on our orders.

Q. From June 30, 1933, when this letter was written, up until the time that your relationship with the Guild
3485 ceased, which I believe was in February of this year, was it your instruction, as head of this business, that all orders for ladies' ready-to-wear should contain that clause? A. Yes.

Q. When you wrote that letter to the Fashion Originators Guild of America, Inc., did you write it to inform them of your honest intention to continue to live up to that promise? A. Absolutely so.

Q. Yes? A. Yes.

Q. Now, you occupy a very responsible position, do you not? A. You have said so several times; I am beginning to believe it myself.

Q. Let me ask you; Before I said it, did you have any doubt about it? A. No, none at all.

3486 Q. Then, when you said you were only beginning to believe it when you heard me say it several times, that was not entirely truthful? A. Well, it was the reiteration that I was objecting to.

Q. Wait a minute. I want to find out something. From the beginning of the time that I told you that you had a pretty responsible position you say you began to think you did, but prior to that time you did not believe that, or did you? A. Surely I believed it. I know it.

Q. Then your statement that because I said it several times you were beginning to believe was not entirely truthful because you believed it before you ever knew of my existence; is that so? A. It was truthful, but it was facetious.

Q. Facetious? A. Yes.

Q. Well, please, since you are on the witness stand and being examined by me under oath, refrain during that time from being facetious. This is a very serious proposition to the Fashion Originators Guild of America, my clients here, and I would appreciate your taking the matter seriously, if you will. A. Very well.

Q. Now, exercising the responsibilities of your large position that you maintain, did you at any time write to Mr. Post or did you ever tell to Mr. Post or say to Mr. Post that the reasons given in this letter were not all of the reasons, but that you had some other reasons for joining the Guild? A. No. 3488

Q. Tell me, as the head of this institution of Strawbridge & Clothier, exercising all of the functions of that of president, if you had some other reasons than the ones expressed to us; to these people—did you not think it your duty to these people to tell them why?

Mr. Haycraft: I object. He could not be expected to put in the confines of that letter every idea which might have come to his mind in connection with the matter.

Examiner Bennett: Sustained. 3489

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Let me ask you this——

Examiner Bennett: It is perfectly obvious that he could not get in the confines of the letter all of the reasons in one particular letter.

Mr. Weisman: Quite right, your Honor. I did not say that. I said did he ever at any other time, I am with you on that. I can understand that within the confines of the letter he might not. I said, "Did you ever at any time, covering the period of three years?" I am entirely in accord with your Honor on that, and I want to be fair to this man.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Now, I will ask you another question, then: Did you ever write to the Guild, or to Mr. Post, as its executive
3491 head, in the performance of your duties toward your company, and state, in words or substance, the reasons that you went into the Guild, or not the reasons we gave you, but we had some others?

Mr. Haycraft: Same objection.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. In answer to my question a moment ago wherein you stated in words or substance that if this program would become universal, or if the Guild manufacturers confined their merchandise wholly to those who were ethical in their handling of goods, then it would be good to the pub-
3492 lic, good to the retailer, and good to the manufacturer; you said that the manufacturer deservedly had a property right in his original; do you remember using that language? A. Yes.

Q. Why do you say he deservedly had a property right? A. Because——

Mr. Haycraft (interposing): Wait a minute. I object to what the witness said being misinterpreted; I must interrupt at this time to raise an

objection that counsel is placing in the mouth of the witness words which he did not state because in his former answer he made a different answer to that, and on the further objection that this is cross-examination upon cross-examination and therefore improper.

Mr. Weisman: Now, wait. This witness certainly said that the manufacturer deservedly had a property right in this original.

Mr. Haycraft: Even if that is so, I object to it on the other grounds previously stated.

Mr. Weisman: We will see about that.

Examiner Bennett: I overrule the objection. 3494

A. Deservedly had a right——

Mr. Haycraft: I object to that as not in accordance with the testimony of the witness.

(Question read.)

By Mr. Weisman.

Q. We can get this straight and you and I, Mr. Tily, can work this out. Did you say, or did you not say, so we will be fair about it, that you felt that the manufacturer deservedly had property rights in his style originations? A. When it was his original?

Q. Yes. A. Of course.

Q. We were only concerned with what was his original. A. Yes. 3495

Q. In this case? A. Yes.

Q. Because you have also testified that the only time you ever returned merchandise was when it was proved to be a copy of a style origination? A. Yes.

Q. What did you mean by "deservedly had a right"? A. The same right that an inventor has to a patent except his right is given by law and this is——

Q. This right is not protected but good morals ought to protect it; is that your opinion?

Mr. Haycraft: I object.

Examiner Bennett: Sustained. I think you have been all over that ground.

Mr. Weisman: I except and offer to prove that if the witness were permitted to answer he would answer in the affirmative.

Mr. Haycraft: Move to strike.

Examiner Bennett: The motion is overruled.

By Mr. Weisman.

3497 Q. Do you know how many members there were in April of this year in the Fashion Originators Guild of America? A. No.

Q. Did you ever seek to find out? A. I sought to find out how many had signed up on the new agreement.

Q. I am not speaking of that. A. I did not seek to find out how many members there were.

Q. Perhaps my question was so framed that you could not understand it and the fault is mine. Let me now amend my question by saying: Do you know how many manufacturer members were members of the Guild in that year and, more particularly, for the month of April? A. No, not for the year or the month.

Q. Do you know whether there were eighteen or twenty?

3498 A. I know there were a great many more than that, because I had a list that we went into in so far as it would be our interest to do so, and I know from looking at the list that it would be more than that.

Q. Do you know how many members there were in the Guild in December, 1935? A. No.

Q. Do you know how many members there were in the Guild in December, 1934? A. No.

Q. Do you know how many members there were in the Guild in December, 1933? A. No.

Q. Do you know how many members there were in the Guild in August, 1933? A. No.

Q. Did you ever know that if you do not know it now? A. No.

Q. You are sure of that? A. Sure; just how many.

Q. Did you ever ask how many? A. I never, personally, asked.

Q. Did you ever find out how many members there were in June, 1933, manufacturing members of the Guild? A. No.

Q. Did you ever know at that time how many there were—how many manufacturers there were who were not members of the Guild but who were selling the same class of merchandise that the Guild members were selling? A. No. 3500

Q. Are you certain of that? A. Now, wait a minute. Yes, I am certain of it. I do not know as to the exact details. I could not give you that.

Q. I did not ask you for the exact details. A. The exact numbers, that is right. I do not know the exact numbers.

Q. What is your opinion of the number of dress manufacturers that there were in business in the City of New York, N. Y., in June, 1933, manufacturing merchandise at $10.75 and upward?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will sustain the objection. If he knows the fact he can give it.

Mr. Weisman: May I speak on that? 3501

Examiner Bennett: No; I have ruled that it will be all right if he knows the fact.

Off the record.

(There was a discussion off the record.)

Examiner Bennett: Proceed.

By Mr. Weisman.

Q. Do you know approximately how many members comprised the membership of the Guild, manufacturer members, in June, 1933? A. No.

Q. Do you know whether it was fifty or one hundred? A. I do not know exactly.

Q. I did not ask for exactly. A. No. Well, it was more than fifty. I do not know just how many.

Q. Would you say it was one hundred? A. I do not know just what it was.

Q. I want to get your best guess. Would you say it was 200? A. I would not say anything, not knowing.

3503 Q. All right. You would not say anything, not knowing? A. Yes.

Q. Would it surprise you to know that in June, 1933, there were, in the City of New York, upwards of 2,000 manufacturers of ladies' dresses selling at wholesale at $10.75 and upward?

Mr. Haycraft: That is objected to as incompetent, immaterial and irrelevant, and not proper cross-examination.

Examiner Bennett: Overruled.

By Mr. Weisman.

Q. The Court says you may answer. A. No, I do not know. You asked me if I would be surprised?

3504 Q. Yes. A. Well, not having made any guess as to anything, why, I am not surprised.

Q. Have you any idea how many manufacturers there were in the City of New York in June, 1933, manufacturing ladies' ready-to-wear dresses at $10.75 and upwards? A. I——

Mr. Haycraft: The witness said he had no knowledge of anything, and could not even guess. This is merely surplusage.

Mr. Weisman: I think that this is a perfectly proper question, your Honor.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: Overruled.

A. I have no idea.

By Mr. Weisman.

Q. Do you have any idea, and did you have any idea on that subject in June, 1933? A. Did I?

Q. Yes. A. I had an idea—if I may qualify it that the particular manufacturers of which I have spoken, or the manufacturers of the type of $10.75 dresses and upward 3506
that we needed to satisfy our customers.

Q. Did you not know that in June, 1933, at the time you wrote this letter, Commission's Exhibit 362, there were only thirty-five members in the Fashion Originators Guild of America, Inc.; does that come to you as a complete surprise to you? A. Complete, yes, it surprises me to learn that. I did not know it was that small. I knew it was a very small group, but I did not know it was that small.

Q. You knew they had a very small proportion of the manufacturers, but you did not realize when you said that, talking about the manufacturers, that they were only—that they only had thirty-five manufacturers in the Guild? A. But, it is manufacturers of a type—— 3507

Q. I am not asking you about that. I am asking you about your realization; is that so? A. Yes.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: Proceed.

Mr. Weisman: I should like to have the last two questions and answers read so that I may get my place again.

(Questions and answers were read.)

By Mr. Weisman.

Q. You testified on your direct examination something about a "Guild Shop" in the store. A. Yes, but it was not in the store.

Q. Where was that "Guild Shop"? A. Ardmore, Pa.

Q. Whose idea was the opening of that "Guild Shop"? A. Mine.

Q. Personally? A. Personally.

Q. The Guild did not stimulate that, they did not ask you to do that? A. No. It was our own idea.

Q. Your own idea? A. Yes.

Q. You did not need them to tell you to do it? A. Oh,
3509 no.

Q. What was the purpose of that "Guild Shop"? A. To emphasize better dresses.

Q. What do you mean, "to emphasize better dresses"? I do not understand you. A. To emphasize better dresses from two standpoints. First, the standpoint of dress, especially, however, the standard of style significance. That was the second. There is the practical monopoly of which I spoke.

Mr. Weisman: I ask that the latter part of the answer be stricken out.

Mr. Haycraft: I object. If it does not suit you I do not think it should go out.

Examiner Bennett: Oh, yes; granted.

3510

By Mr. Weisman.

Q. You put up a nice big placque in front of that store did you not? A. In front of our store?

Q. In front of the shop, "The Guild Shop," in Ardmore? A. In front of the shop, yes.

Q. That placque, you understood, was a representation to the public, was it? A. It was.

Q. It contained reading matter that you wanted the public to read; is that so? A. Yes.

Q. You would not have anything thereon that was not truthful, would you? A. Not knowingly by any manner of means.

Q. You say "not knowingly"; you knew what the placque contained? A. Yes, sir. But not truthfully—now.

Q. What? A. We would not knowingly have put anything there that we knew to be untrue.

Q. You would not recklessly disregard the truth and then say you did not know about it? A. No.

Q. In other words, you stand squarely behind what was on that placque? A. Always do. 3512

Q. What did you put on the placque?

Mr. Haycraft: I object.

Mr. Weisman: I want to show the statement made by someone on the outside showing a different statement from what the witness now states to the Court, when it was made under his supervision and direction and with his approval. It is for the purpose of refuting his previous testimony and goes directly to the credibility of the witness.

Mr. Haycraft: It is not proper cross-examination.

Examiner Bennett: I will sustain the objection.

Mr. Weisman: Exception.

3513

By Mr. Weisman.

Q. Did you believe that the placque was a distinct endorsement of the Fashion Originators Guild?

Mr. Haycraft: I object as incompetent, immaterial and irrelevant, and not proper cross-examination.

Mr. Weisman: To save time I will withdraw the question and reframe it.

By Mr. Weisman.

Q. Did you place that placque there as a distinct endorsement of the Fashion Originators Guild, its aims and purposes?

Mr. Haycraft: Same objection.

Examiner Bennett: I will let the witness answer that question.

By Mr. Weisman.

Q. The Judge says you can answer the question. A. No. It was not our purpose.

3515 Q. Do you know Mr. Roy E. Clarke? A. I think so.

Q. Don't you know it? A. Yes.

Q. Is he still with your organization? A. He is.

Q. He is? A. Yes.

Q. Do you know whether or not he wrote to the Guild as follows——

Mr. Haycraft: I object.

By Mr. Weisman.

Q. "It seems to us that this is a distinct endorsement of your organization, but we do not wish until you knew about it and are glad to note that so doing is acceptable to you."

3516 Mr. Haycraft: I object to the question and move that the question be stricken out because he is reading from a document which is not in evidence, and also on the basis of the objections I have heretofore asserted and urged to this question.

Examiner Bennett: I sustain the objection on the ground of irrelevancy. I think that that question is not involved; certainly, it does not involve the contradiction of anything the witness has said, and I do not see where it is competent on any other theory.

Mr. Weisman: It is competent to show the evident endorsement of the Guild. It is competent to show that where he says he was forced to join the Guild certainly it did not make it necessary for him to write a letter of this sort in which he states that this is a distinct endorsement of this organization. Certainly the statement contained in this letter is a direct refutation of his statements that he was forced to join it. A man who is forced to do something ordinarily does not write in very enthusiastic letters about it. It seems to me that it is very serviceable for the idea suggested by me just then.

3518

Examiner Bennett: No. I do not think so.

Mr. Weisman: It is further important on the ground of questioning the credibility of the witness in telling it, Judge.

Examiner Bennett: I have ruled. Please, let us not have so many of these post-mortems after I have ruled.

Mr. Weisman: Yes, sir. May I have an exception?

Examiner Bennett: Yes.

By Mr. Weisman.

Q. Did you——

3519

Mr. Weisman: Well, before asking you that question may I make this offer, that if I were permitted to have this witness answer the question he would have stated that Mr. Roy E. Clarke was in charge of the publicity of the Strawbridge & Clothier Company, of which this witness is president, and that Mr. Clarke wrote to the Guild on March 6, 1935, to wit—two years after they had joined the Guild—as follows:

"It seems to us that this"—referring to the placque—"is a distinct endorsement of your organization." Certainly that is germane, Judge.

Mr. Haycraft: I move to strike out the offer.

Examiner Bennett: It may be stricken.

Mr. Weisman: Exception.

Examiner Bennett: It is irrelevant.

By Mr. Weisman.

Q. You stated that your concern did a volume of $3,000,000 per year in dresses; was I correct in making that statement? A. Correct.

3521 Q. What? A. Quite correct.

Q. Does that include coats and suits? A. No.

Q. That is just in dresses? A. Yes.

Q. You also stated—what proportion of your business is done in what you call "better dresses"? A. I have not the figures. You will have the—I do not have those exact figures. I have the totals. We keep matters of that type handled through our divisional men, or merchandising men, and it does not go through me.

Q. In other words, you do not know anything about that? A. The divisions?

Q. I am asking you whether you know? A. No.

Q. No? A. No.

Q. That is all right, then. I just wanted to know if you knew. A. No.

3522 Q. What price do you place upon the better dresses; in what price range? A. The price range of the really better dresses, $19.75 up.

Q. What do you mean by "the really better dresses"? have you any dresses that are not really better? A. In my testimony, I testified to better dresses, and I had in mind that department which we call the Misses' Better Dress Department.

Q. What is the price range there? A. In my testimony I testified as to the better dresses; I had in mind——

Q. No, no. I just asked you what the price range was there. A. Oh, I beg your pardon.

Q. What is it? A. $19.75 up—no, wait one minute. I would rather you would ask the divisional men.

Q. No. I would rather ask you. A. You have asked me. I do not recall exactly.

Q. How is it you cannot recall that for me when you can recall for Mr. Haycraft so splendidly? You testified, when you were being questioned by Mr. Haycraft, and you testified, did you not, on that subject this morning with great glibness? A. I had before that Women's Better 3524
Dresses Department.

Q. From whom did you get that information? A. It was on a piece of paper.

Q. Who made up that information from which you got that thought? A. It was taken from our figures.

Q. Who made it up? A. Our accountants who have access to those records.

Q. Do those papers show what the better dresses—misses' better dresses sold for? A. No.

Q. How do you know the prices you gave Mr. Haycraft this morning? A. In the misses' better dresses all I gave—if I gave him the prices I do not recall that I did.

Q. You have recollected a great many things that happened in 1932, 1933, and now you cannot recall what happened in this court room this morning? 3525

By Mr. Weisman.

Q. You may answer that question now.

The Witness: I do not know what the question is.

(Question read.)

Mr. Haycraft: I object.

Examiner Bennett: I have no passed upon it yet, but I will sustain it in that form. So far as I recall, he did not make that statement.

Mr. Weisman: I beg your Honor's pardon. I did not hear.

Examiner Bennett: He did not make a statement that he could not recollect it, as I recall it.

By Mr. Weisman.

Q. Well, let us see—with regard to the retail price of ladies' better dresses, which you sell in your store, what is your recollection of the prices you gave us this morn-
3527 ing? A. $19.75 and up is my recollection.

Q. Is that—where did you get that price? A. From the statement I have at the office as to what constituted the better dresses.

Q. And was that statement prepared for the purposes of this hearing? A. That statement was one-handed to me, and I got it from a member of the department, the department which was involved.

Q. Who handed it to you? A. It was handed to me—this particular one was handed to me by our merchandise manager.

Q. When? A. Yesterday.

Q. Yesterday? A. Yes.

Q. Why did he hand it to you? A. For the purposes of
3528 testifying.

Q. How did you know what you were going to testify to? A. I was going to testify as to the effect upon our good will.

Q. No, no, no. I say, how did you know that you were going to be asked about the prices of these better dresses? A. It would—it was rather a desirable thing to be established.

Q. I did not ask you that. How did you know that you were going to be asked about the prices of these misses' better dresses? A. That was to be a part of my direct testimony.

Q. How did you know what your direct testimony was going to be; the questions that were going to be put to you on your direct testimony? A. Oh, that came up during the conference which we had at the store.

Q. When and where? A. In my office in my store.

Q. Who was present at that conference? A. Our divisional managers, our—our divisional merchandise manager, and the attorney for the F.T.C.

Q. The Federal Trade Commission? A. Yes. 3530

Q. When? A. Yesterday.

Q. Yesterday? A. Yes.

Q. And as a result of that you took a piece of paper given to you which gave your better dresses as being sold from $19.75 and up; is that so? A. No. Those papers had been prepared before, before the attorney came to Philadelphia.

Q. What is the wholesale prices of the dresses that you sell for $19.75 and up? A. I do not know.

Q. What? A. I am not the dress buyer.

Q. You know a lot about your dresses, do you not?

Mr. Haycraft: He said he did not.

By Mr. Weisman. 3531

Q. Let us go a little further and see if he really does not know.

Examiner Bennett: The witness on direct testimony said he had no details of that situation, but it was reported to him by an assistant in that connection.

By Mr. Weisman.

Q. Offhand, then, so there can be no question about it you do not know the wholesale prices of the dresses that you sell for $19.75? A. I do not.

Q. Did you know it in 1933?

Mr. Haycraft: I object.

By Mr. Weisman.

Q. At the time you signed the declaration of co-operation?

Mr. Haycraft: I object.

3533

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

I wish to make this offer of proof, that if the witness had been permitted to answer, he would have answered that he did not know that in 1933.

Examiner Bennett: I think that that is proper.

Mr. Weisman: As an offer of proof?

Examiner Bennett: Yes.

Mr. Weisman: I say to your Honor that this is very important on the question of passing on the credibility as to the reasons that he did not know even the wholesale prices of the dresses. I submit that my substantive rights—that is, the substantive rights of my clients—have been seriously impaired

3534

by the refusal to permit me to ask and receive an answer to this question.

Examiner Bennett: The refusal stands.

Mr. Weisman: May I have an exception?

Examiner Bennett: Yes.

Mr. Weisman: Thank you.

By Mr. Weisman.

Q. Is this a fair statement, Mr. Tily, that most of the things that you have testified to you really do not kno

yourself, but, from what somebody told you in the ordinary course of your business? A. Pursuant to information brought to me by those in whom I have absolute confidence.

Q. And the people who brought you that information are still with the store? A. Yes.

Q. Are they all in Philadelphia? A. What?

Q. They are all here in Philadelphia? A. Yes.

Mr. Haycraft: And will testify in this proceeding if we ever get to them.

Mr. Weisman: It will be a new surprise for me to see you bring anyone in here in the form of a witness who can testify from anything except hearsay. 3536

Mr. Haycraft: How about the witness on the stand two days in Boston, Mr. Seegal.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: Now, if you gentlemen have finished this colloquy between yourselves we will proceed on the record.

By Mr. Weisman.

Q. Did you say to me—I withdraw that—did you say to Mr. Haycraft this morning that in your co-operation with the Guild—that your co-operation with the Guild began with your desire to eliminate style piracy? 3537

Mr. Haycraft: I object to that.

Mr. Weisman: The witness shook his head meaning yes.

By Mr. Weisman.

Q. Do not shake your head but please answer "yes" or "no," so that we can get it on the record.

Examiner Bennett: I will overrule the objection and see what you are getting at. I think you are starting in on the same thing that you threshed out to a frazzle before.

Mr. Weisman: Well, we will see in a moment.

By Mr. Weisman.

Q. Will you please answer the question? A. What is the question.

Mr. Weisman: Read the question.

(Question read.)

3539 Mr. Haycraft: I must say I do not care whether the witness shakes his head or not, he did not make any such statement as that.

Mr. Weisman: I will ask him what he did say.

By Mr. Weisman.

Q. Did you make such a statement? A. I do not recall that statement, not that exact statement; in substance, yes.

Q. Is that a fact? A. In substance, style piracy—in our desire to co-operate as we have stated—was a factor in our original decision.

Q. Is it a fact that your co-operation with the Guild began with your desire to eliminate style piracy? A. I do not know whether it began, if that was the statement I gave, that is correct.

3540 Q. Did your previous statement tell the truth? A. If it began—if that is my statement, yes. You may not be putting the exact words.

Q. In 1933 you had, as the head of this company, Strawbridge & Clothier, a desire to eliminate style piracy? A. I have several times stated that, yes.

Q. Do you still have an honest desire to eliminate style piracy? A. If possible; we have that desire but do not believe it possible.

Q. You have the desire? A. Yes.

Q. The possibilities are for the court? A. Yes.

Q. The desires are for you? A. Yes.

Mr. Haycraft: I object to that last statement of counsel, as to the possibilities being with the court. The witness has something to say as to the practicability of that. He has already testified on that. I move to strike out that question of counsel from the record.

Examiner Bennett: If you are making a motion to strike, you are referring to the question propounded by counsel for the respondent as to the possibilities of removing style piracy? 3542

Mr. Weisman: I asked him if he had an honest desire to eliminate style piracy, and he said that if possible he desired to do so, but did not believe it possible, and I told him, or asked him if it were not true that the possibilities are for the Court and the desires are for him, to which he said yes.

Examiner Bennett: Read the questions and answers referred to.

(Questions and answers were read.)

Examiner Bennett: I will let it stand.

Mr. Weisman: Thank you.

By Mr. Weisman.

Q. What was the total volume—I withdraw that. Do you know what dress departments the Guild policy now is applicable to? A. Well—— 3543

Q. Do you know? A. Yes. Those run from $10.75 up to—$10.75 up to, that includes misses' dresses of various kinds, misses' dress coats and general coats.

By Examiner Bennett.

Q. Are you speaking of the retail prices? A. No, that is the cost prices, $10.75 and up, $10.75—no, $10.75 retail, not wholesale.

By Mr. Weisman.

Q. Well, just which is it? A. Retail.

Q. That is the minimum? A. $10.75 retail.

Q. Retail? A. Retail.

Q. What is the wholesale price of the dresses that sell at $10.75 retail? A. I think I told you before that those items are a matter of detail that I am not familiar with.

Q. You are only interested in sales, not purchases? A. I am interested in profits, we deal in percentages of totals. My job is to deal in totals, the merchandise manager is the man who deals in the details.

Q. As dealing in details, you are not interested? A. No.

3545 Q. As dealing in totals you are not interested in cost; your statement, or explanation, is that your profits come from totals and not from cost and profits? A. Both.

Q. Both, of course.

Mr. Haycraft: I object.

Mr. Weisman: The witness has answered the question.

Examiner Bennett: Objection overruled.

By Mr. Weisman.

Q. Do you not know the costs in your business? A. Not on $10.75 or $9.75, and other things; I would not have a chance to go into those details with the multitudinous

3546 other matters that I have to deal with during the course of the day. I have capable and competent assistants who take care of matters of that kind.

Q. Let me ask you this, on volume what was your total volume in your Dress Department in February, 1936? A. I read from a paper this morning.

Q. Aside from the paper, do you mean that if you are divorced from the paper that divorces you from all knowledge of your business? A. Detailed knowledge. You have

asked me to testify as to a department. This morning I testified in general.

Q. Who made up this paper? A. Why, our own people made that up.

Q. Did you check it to see if it was correct? A. I did not have to.

Q. I did not ask you that. I asked you if you did. A. I did not check it to see if it was correct, no.

Q. So, as a matter of fact, you do not know whether it was correct or not on other than your belief that it was correct? A. Correct.

Q. You, notwithstanding the fact that this is a serious case to the Fashion Originators Guild, and the fact that 3548
you are under oath in this case, you took a sheet of paper that you have no idea whether it is correct or not except just a speculative idea that it possibly is, and come in here and testify on it; is that the idea? A. I——

Mr. Haycraft: I object to that last question as highly improper.

Mr. Weisman: Mr. Examiner, this witness comes in here and says that he is testifying to something because it is on a piece of paper, and that is all that he can testify to.

Examiner Bennett: I doubt if you have any right to lecture him on that.

Mr. Weisman: But I will certainly lecture him plenty when I come to write my brief. 3549

Examiner Bennett: Suppose you do it in your brief but do not do it on the trial of this case.

By Mr. Weisman.

Q. What was your volume of dress business in the month of February, 1936? A. I do not know.

Q. What was your volume of dress business in the month of February, 1935? A. I do not know. I read that from a paper.

Q. No, no. What is your answer to that? A. My answer is no.

Q. What was your volume of dress business for the month of March, 1936? A. I do not know.

Q. What was the volume of your dress business in the month of March, 1935? A. I do not know.

Q. What was the volume of your dress business in the month of April, 1936? A. I do not know.

Q. What was the volume of your dress business in the month of April, 1935? A. I do not recall.

Q. What was the volume of your dress business in the month of May, 1936? A. I do not recall.

3551 Q. What was the volume of your dress business in the month of May, 1935? A. I do not recall.

Q. What was the volume of your dress business in the month of June, 1936? A. I do not recall.

Q. What was the volume of your dress business in the month of June, 1935? A. I do not recall.

Q. Did you—June was comparatively a recent month, —that is, it is last month. Do you want us to believe that you cannot recall what your volume was in June, 1936? A. I do not care whether you believe me or not, but it is true.

Q. Did you ever know it? A. Sure I knew if I had looked it over at the time.

Q. Did you look it over? What I am trying to find out is it a fact that you do not recall, or is it a fact that you

3552 never knew? A. Never is a long time.

Q. It is not so very long when we apply it to June, 1936. Did you ever actually see the figures setting forth the total of business done in your Dress Department of Strawbridge & Clothier for June, 1936? A. I saw that at the time divided into the various divisions of our Dress Department.

Q. Did you ever total that? A. We talked about that yesterday.

Q. Did you ever total that? A. I have the total in my pocket.

Q. Let us have it. A. Well——

Q. May I see that, Mr. Tily? A. Yes.

(Witness hands counsel a document.)

Q. Do you say that the piece of paper you just handed me is the piece of paper which you used, and from which you were enabled to tell yesterday the total dollar volume of your Dress Department in the month of June, 1936? A. It is not arranged by months there.

Q. By which you could tell the dollar volume of the Dress Department for any given time? A. The total for 3554
the entire time, yes.

Q. Total dollar volume; is that so? A. Yes, sir.

Mr. Weisman: I offer this piece of paper in evidence.

Mr. Haycraft: I object.

Mr. Weisman: I will give it to the Court and the Court will see my reason.

(Counsel hands a document to the Examiner.)

Examiner Bennett: I will sustain the objection to this line of questioning. This piece of paper does not have any bearing on the particular thing you are questioning the witness about now.

Mr. Weisman: The fact is that it does not. I think the Court will see that the document does con- 3555
tradict it on that very basis.

Examiner Bennett: You may use that paper to get certain information. When you get to that then we will see whether we want to use this paper or not. I thought you read the information from that paper and I assume you read it correctly.

By Mr. Weisman.

Q. I understood you——

Mr. Weisman: Just a moment. I except to your Honor's ruling.

Examiner Bennett: Noted.

By Mr. Weisman.

Q. I understood you to say that you do not know what was your total dollar volume in the Dress Department of your business in the month of February, 1936; is that correct? A. Correct.

3557 Q. I ask you to look at this piece of paper and ask you whether or not the figure 100.6 will give you any refreshment of your recollection as to what was the business in your Dress Department? A. Yes.

Q. How much? A. $100,600.

Q. $100,600 you did in your Dress Department in February, 1936; is that correct?

Examiner Bennett: Proceed.

The Witness: In making the statement this morning I spoke of better dresses generally and showed certain losses. I should have said "misses' better dresses." The loss figure which I gave, which I copied from the paper which I had on another paper in my own handwriting, which I just copied,

3558 were misses' better dresses. The mistake was in saying better dresses without the qualification.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Yes. A. In this whole situation.

Examiner Bennett: I don't object.

Now, as to your motion, I am going to grant your motion to strike the testimony as to the percentages

Mr. Weisman: Thank you.

Examiner Bennett: And, of course, that terminates your cross-examination on that phase of the case.

Mr. Weisman: Thank you.

By Mr. Weisman.

Q. We are not going to ask you any questions about that. You may put it away now. Thank you. A. You are very welcome, sir.

(There was a discussion off the record.)

3560

By Mr. Weisman.

Q. Just a few more questions, then. You stated, I believe, that Strawbridge & Clothier were subsidizing some manufacturers; did you not? A. Yes.

Q. How many? A. Well, Strawbridge & Clothier in connection with the A.M.C. are doing it.

Q. Wait a minute. Didn't you say this morning that it was Strawbridge & Clothier and not the A.M.C. which was— A. I said we are.

Q. Who did you think we understood, when you said "we"? You weren't testifying on behalf of the A.M.C.; were you? Don't you want to correct that? A. "We" to my mind meant what we had to put in it, our proportion of the total.

3561

Q. Do you mean that you and a lot of other retailers who belong to the A.M.C. got together and subsidized some non-Guild manufacturers? A. We were endeavoring to get what you wouldn't let us have except on your terms.

Q. No. No. That isn't what I asked you. You want to get away. You have got to help me, too. You answer my questions. A. Yes; that is quite true.

Q. How many manufacturers were so subsidized? A. I would rather you would ask one of the divisional men.

Q. Well, do you know? A. Not exactly. Four or five, I should say; I am not sure just how many. I know——

Q. Where are they located? A. In the City of New York.

Q. Do you know who they are? A. No. That is——

Q. Now, you also said on your direct examination that "we have also lent large sums of money to manufacturers." Now, when you said "we," you didn't mean Strawbridge & Clothier then? A. "We" meant the A.M.C. our proportion of it.

3563 Q. How much was your proportion of it? A. $5,000.

Q. How many stores in the A.M.C. each put up $5,000? A. I think it was in the neighborhood of $50,000 altogether, is my recollection.

Q. In other words, I am then to understand that the A.M.C., acting on your behalf and acting on the behalf of other stores who are members of the A.M.C., have advanced to manufacturers of ladies' dresses the sum of $50,000? A. That is my recollection of the total. I am not sure that is the exact amount.

Q. This was your stockholders' money. Weren't you interested? A. I am concerned with what our amount was, which, I have told you, was $5,000.

Q. How much were you asked for?

3564 Mr. Haycraft: That is objected to, how much was asked for.

The Examiner: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. You stated on your direct examination that some manufacturers were lent the money and some very subsidized; is that correct? A. Yes. I think the "subsidized"

is probably wrong. I think the use of the term "subsidy" is probably wrong. If one makes a loan which you feel you may not get back, in that sense it is a subsidy.

Q. Do you know whether a note was taken for that? A. No. The A.M.C. know all about that.

Q. What evidence have you got with regard to your stockholders' money that the A.M.C. has got it? A. We have no evidence except the fact that we have chipped into a pool, also have passed——

Q. You say you have no evidence except you chipped into a pool? A. (Witness nods head affirmatively.)

Q. In this case a letter was written by Mr. Reilly on February 14, and which is in evidence—I don't know its 3566
number. That is the Reilly letter, Judge, in which he wrote, "We have been authorized by the store principal of eighteen member stores of this association to inform you that from this day on we would like to put ourselves on record as being willing not to co-operate as theretofore." Do you remember that letter?

Mr. Haycraft: That is objected to; irrelevant, immaterial and not proper cross-examination.

Mr. Weisman: Well, I will withdraw the question.

By Mr. Weisman.

Q. In such letter were you one of the member stores 3567
therein referred to?

Mr. Haycraft: That is objected to, Mr. Examiner; irrelevant and immaterial, and not proper cross-examination.

Examiner Bennett: What do you expect to prove?

Mr. Haycraft: Well, it——

Examiner Bennett: Did you say that was withdrawn before they were red carded?

Mr. Weisman: Well, yes, Judge.

Examiner Bennett: Well, I will take it for that purpose.

By Mr. Weisman.

Q. Were you one of the member stores? A. Have been one of the member stores for years.

Q. You are familiar with Mr. P. J. Reilly's letter of February, 1936?

Mr. Haycraft: February what?

Mr. Weisman: February 14. I beg your pardon.

3569 A. I don't remember that letter, no.

Mr. Haycraft: Just a moment, Mr. Examiner. I want to point out——

Examiner Bennett: That is February 14?

Mr. Haycraft: Yes; that is eight days after he claims he was red-carded.

Examiner Bennett: I will sustain the objection.

By Mr. Weisman.

Q. Well, coming back, then, how many were there of you manufacturers that chipped in or made this pool, as you say? A. How many——

3570 Mr. Haycraft: That is objected to, Mr. Examiner, as irrelevant and immaterial. The witness has indicated the extent to which he contributed. I think that is as far as he should go in the cross-examination at this point.

Mr. Weisman: I don't think I am limited to that.

Examiner Bennett: Let me have that question, please.

(The question and answer were read by the reporter as above recorded.)

Examiner Bennett: I will sustain the objection. I think we went over that.

By Mr. Weisman.

Q. This morning in answer to Mr. Haycraft's question you not only said that you lent the money, but you said that you subsidized them; didn't you? A. Yes.

Q. As a matter of fact, you didn't subsidize anybody; isn't that so? A. Well, the lending of money whether—the lending of money where there may be no return is a subsidy in that sense. 3572

Q. And that was the sense that you meant? A. Yes.

Q. In other words, there was the legal obligation to return it, but if these people weren't successful in their business they wouldn't be able to return it? A. Quite correct.

Q. Isn't that true of anybody that you lend money to? A. Yes.

Q. Well, then, why did you use the word "subsidy" if it weren't to give this Court an opinion that you gave them the money? A. Because when you lend to responsible people for the purpose of—or for some purpose in business you investigate their credit. Under the circumstances all we could investigate was their ability to produce. The circumstances were such that we must have these dresses and consequently regardless of credit and basing our conclusions only on their ability to make them, competition —the kind of things that we want, their ability to make it. We lent it, and feeling that it is probably a total—may be a total loss. 3573

Q. You also said this morning, you used this word with regard to this, "by giving them funds." As a matter of fact, you didn't give anybody funds; you lent the funds, isn't that so? A. That is correct.

Q. And that was a bit of over-enthusiasm for the Commission's case when you used the words "by giving them funds"; is that it? A. A little verbal inaccuracy.

Q. You haven't erred in my favor in any of your verbal inaccuracies yet; have you? A. I don't know. That remains to be determined, ha, ha, ha.

Mr. Weisman: Now, Judge, you have kindly granted my motion to strike out that testimony concerning the volume in this particular narrow field which was introduced.

Examiner Bennett: Yes. Yes.

Mr. Weisman: I also ask that that motion be
3575 deemed to include the testimony as to this witness' conclusions based upon that testimony.

This morning he testified that based on the experience and knowledge gotten from those figures which you have now stricken out, he had such and such opinions as to it. Now, I naturally intended to cross-examine him but since you have stricken out the matter upon which that opinion is based, I ask that the motion be granted as to that which followed.

Examiner Bennett: There was some testimony that was entirely independent. Some of his statements as to losses were entirely independent of that particular thing.

3576 Mr. Weisman: But as to those that were not?

Examiner Bennett: Those, of course, that were dependent direct as to that testimony, of course, are stricken out of the record.

Mr. Weisman: Thank you.

By Mr. Weisman.

Q. I also understood you to say that it takes a long time to develop the skill necessary to produce style origi-

nations; is that correct? A. (Witness nods head affirmatively.) I did say that, yes.

Q. Well, I mea: — A. To build up an institution which could do it, yes.

Q. Have you now found out that it also takes a lot of money? A. Well, you rather scoffed at our $3000 a few moments ago. It depends on what you call a lot of money.

Q. You spoke about $50,000, too; didn't you? A. $50,000 for the entire group.

Q. By the way, have you pledged yourself to any further money, if that is insufficient? A. Not as yet.

Q. Do you expect to? A. We have to, if conditions remain as they are. 3578

Q. In other words, it takes a lot of money to develop and a lot of skill to develop an original style; is that it? A. A lot of skill, yes, and a lot of money in business.

Q. In other words, a manufacturer—now, if you don't know this, tell me—a manufacturer who develops an original line, or a line of originals, spends a good deal of money in developing that original line; isn't that so? A. He might spend less than we, because we have got to develop from the ground up.

Q. I didn't ask whether he spends less than you or spent more than you. See? You might spend more because you are a $20,000,000 concern, combined, and this is only one poor little manufacturer, so we are not going to enter into any comparison. You are the head of a big business enterprise and you do $3,000,000 in dresses, and I want 3579 to find out whether or not—and you are, I take it, complaining about your inability to get original designs from Fashion Originators Guild members; that is correct, isn't it? A. Correct.

Q. Now I am asking you whether or not you know it to be a fact that it takes a lot of money and effort to produce these originals? A. That is what we look forward to having to do, but we are inexperienced.

Q. I am not asking you—wait a minute, Mr. Tily. I am not asking you what you are looking forward to doing. I am asking you whether you know this to be a fact or if you don't know it to be a fact.

Examiner Bennett: Right here I want to say that you seem to be asking a question which the witness is not qualified to answer.

Mr. Weisman: If he doesn't know, I want him to say so.

Examiner Bennett: Did you ever go into the manufacturing of dresses?

The Witness: No.

3581 Examiner Bennett: Did you ever do any developing of original styles?

The Witness: No.

Examiner Bennett: This goes on the record. You did not?

The Witness: No.

Examiner Bennett: Well, how is he competent to answer those questions?

By Mr. Weisman.

Q. Did your buyers ever discuss with you the matter of this origination of style?. A. Yes, but not in connection with—well, yes.

Q. And were these conversations in the ordinary course
3582 and conduct of your business? A. Yes.

Q. Did you learn from them in the ordinary course and conduct of your business and the reports that were brought to you that manufacturers who produced original styles did so at a large cost to themselves?

Mr. Haycraft: That is objected to. There is no foundation laid.

Examiner Bennett: Sustained. There is no foundation for that any more than there is for the

question. You haven't shown that those buyers are familiar with these original styles or original manufacturers. You know better than that. Why do you go into those things?

Mr. Weisman: I submit, Judge, that the basis of all of this man's direct testimony is what he learned from these buyers in the ordinary course and conduct of his business.

Examiner Bennett: I know.

Mr. Weisman: And when I ask him the same question, the questions based upon the same knowledge, they are excluded. Now, I don't particularly care much about it, Judge, because I will prove 3584
it directly; but I do say that I think—and don't take this on the record——

(There was a discussion off the record.)

By Mr. Weisman.

Q. Do you know whether or not the Guild and its members are quite willing to resume relations with you provided you will indicate it as a part of your store policy to not deal in copies? A. Do I know that?

Q. Yes. A. Not to anything that they have directly said to me.

Q. What? A. Not to anything that has been directly communicated to me since we were red carded. The presumption is that we had signed that agreement. We would 3585
not—we would still be dealing with them.

Q. Well, you were— A. That constitutes the knowledge, I suppose.

Q. You were red carded, were you not, because of the claim—without going into the merits of—by the Guild that your had departed from the policy of protection of original merchandise; isn't that so? A. Yes.

Q. Now, you know, do you not, that if you are willing to enter into or make any statement to the Guild that it is

your intention not to deal in copies of original Guild merchandise, the Guild and its members are quite willing and anxious to do business with Strawbridge & Clothier? A. I assume that is a fact.

Q. Well, you know it, don't you? A. Yes.

Q. In other words, you understand that the Guild is only unwilling, or the members of the Guild are only unwilling to do business with you as long as Strawbridge & Clothier persist in their unwillingness—may be justified and it may not; no implication—to protect the original originations or creations of the Guild manufacturers; isn't that so? A. Yes.

3587 Mr. Weisman: That is all.

Redirect examination by Mr. Haycraft.

Q. In respect to the last examination, I ask you if you can identify this paper which I hand you? A. I do.

Mr. Haycraft: Mark it for identification.

Mr. Weisman: May I see it?

(Letter from Albert M. Post, Executive Director, Fashion Originators Guild of America, Inc., 512 Seventh Avenue, New York City, under date of February 4, 1936, to Strawbridge & Clothier, Philadelphia, Pa., attention of Mr. Tily, was marked for identification Commission's Exhibit 366.)

3588

(Copy of Declaration of Co-operation in Anti-Piracy was marked for identification Commission's Exhibits 367-A and 367-B.)

By Mr. Haycraft.

Q. Showing you the paper which you just identified as Commission's Exhibit 366 for Identification, I will ask

you if you received the original of that letter from the Guild? A. Yes.

Mr. Haycraft: I offer Commission's Exhibit 366 in evidence.

Mr. Weisman: No objection, Judge.

Examiner Bennett: All right. It may be received as Commission's Exhibit No. 366; is it?

Mr. Haycraft: I suppose. I don't remember what 365 was. I think this ought to be 365.

All right. We will settle this up some other time.

(Letter referred to, heretofore marked for identification Commission's Exhibit 366, was marked as an exhibit and received in evidence.) 3590

By Mr. Haycraft.

Q. In this letter, Commission's Exhibit 366, the following statements appear: "As your staff have refused to co-operate, apparently because they claim that your declaration does not cover the mechanics of co-operation, we are required in fairness to all other co-operating retailers to return your original 'Declaration' signed on June 30, 1933, by Mr. Tily." I ask you if that is the Commission's Exhibit 362 which was identified in evidence this morning? Do you recall the letter? A. The letter which I referred to my views of February 4; wasn't it?

Q. No; the 362 was the original letter, the original co-operation letter which you signed on June 30, 1933. Do you recall that? A. Oh, yes. Yes. 3591

Q. Then continuing with the letter: "However, we are enclosing herewith our new and supplementary 'Declaration of Co-operation' which we believe you will find not only explicit, but just and fair. Our members require that the new Declaration be signed in order to continue dealing with you. If we do not receive the new signed Declara-

tion on or before February 10, 1936, we must assume that it is not your intention to co-operate with us in our fight against the evils that beset the industry." I now ask you whether or not the paper which I hand you now is the copy of the new declaration of the co-operation referred to in Commission's Exhibit 362? A. I would have to examine it in detail in connection with the other (referring to Commission's Exhibits 367-A and 367-B). But let me see. It embodies the new conditions——

Mr. Weisman: I ask that the answer be stricken out. I mean, obviously this witness cannot remember.

3593 Examiner Bennett: What is the answer?

The Witness: I identify that as the declaration of co-operation which was sent us.

By Mr. Haycraft.

Q. With this letter, Commission's Exhibit 366? A. Yes.

Mr. Haycraft: I offer that in evidence, marked Commission's Exhibits 367-A and 367-B. This is a copy. The original, I assume, is in the witness' file.

Mr. Weisman: No objection.

Examiner Bennett: It may be received.

(The document referred to, heretofore marked
3594 for identification Commission's Exhibits 367-A and 367-B, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. Now, Mr. Tily, I show you Commission's Exhibit No. 364, which you identified earlier this afternoon or this morning. A. Yes.

Q. I show you Commission's Exhibit 366 and ask you if Commission's Exhibit 366 is the letter of February 4 that is mentioned in Commission's Exhibit 364? A. It is.

Q. Now, calling your attention to Respondents' Exhibits 17 and 18-A and B, I ask you if that corresponds and is related to Commission's Exhibit No. 366, the letter from the Fashion Originators Guild of February 4, 1936? A. Well, yes, correct, with a qualification.

Mr. Weisman (to the Reporter): I don't think you heard that, "Yes, well, correct, with a qualification."

The Witness: No, I didn't say that.

Mr. Weisman: Your answer was "correct"? 3596

The Witness: Yes.

Q. The line of examination, cross-examination, was referring to a time, I believe, with respect to when Mr. Bergdoll represented your organization or the A.M.C. in dealing with the Guild. In making one of your answers you referred to the issuance of a new policy by the Guild. A. (Witness nods head affirmatively.)

Q. Now, I want to know what you had in mind when you said that in connection with the Guild activities, or in connection with Mr. Bergdoll's employment? A. Two things were. In the first place, the fair trade conditions which were put in this, which we felt were unfair interference with our business; but our great fear was that— 3597

Mr. Weisman: Now, I submit that——

Mr. Haycraft: That may be stricken. Not responsive.

By Mr. Haycraft.

Q. What I am trying to find out——

Mr. Weisman: If he knows.

By Mr. Haycraft.

Q. —Mr. Tily, is what was, or when was there inaugurated a new policy by the Guild that you referred to in your testimony on cross-examination? A. Oh, I don't know exactly when, but it was a long while before our red carding. It was indicated in their new conditions here which they sent here for us to sign in this exhibit.

Q. New conditions here, you refer to— A. This exhibit.

Q. Commission's Exhibit No. 367-A? A. Yes, new agreement.

Q. Would it refer to the prospective affiliates, first paragraph in that letter, Commission's Exhibit No. 367-A? A.

3599 Yes.

Q. Do you know when that took place? A. Exactly?

Q. Yes. A. No. No. I do not.

Q. Do you know whether or not it was more than a month or two months prior to the sending out of this letter? A. It was some long while before the closing up.

Q. What was your understanding of that change in policy?

Mr. Weisman: Objected to as being incompetent, immaterial and irrelevant.

Examiner Bennett: As to what his understanding was?

Mr. Weisman: As to what his understanding was.

3600 Mr. Haycraft: What his understanding was of the change of policy by the Guild.

Examiner Bennett: I will let him answer. Overruled.

Mr. Weisman: Exception.

A. The change of policy included not only that but it included the extension of this fartherly, lines farther down.

By Mr. Haycraft.

Q. Will you explain what you mean by that? A. The—in the price lines which were very much lower than they had been before.

Q. What were they before, if you recall? A. $10.75.

Mr. Weisman: Wait a minute. Will he tell us whether it was $10.75 wholesale or retail?

The Witness: Well, we will let our divisional manager answer that.

Mr. Weisman: I object to this witness testifying ad nauseum this way about something that he doesn't know about.

3602

Examiner Bennett: That is sustained.

Mr. Weisman: Thank you.

Examiner Bennett: If the witness doesn't know, what is the use of following that up?

Mr. Haycraft: All right. That is all.

Mr. Weisman: Now, may it please your Honor, by reason of this new direct, I will have to——

Examiner Bennett: This gentleman has been held up here all afternoon on a long cross-examination. If you have any recross-examination I am going to ask you to have it right now.

Mr. Weisman: Wouldn't your Honor permit me to examine him Monday?

Examiner Bennett: Oh, no.

Mr. Weisman: He lives in town. He works in 3603
town.

Examiner Bennett: Unless he volunteers. I don't object to his coming if he wants to for further cross-examination.

Mr. Weisman: Wouldn't you return Monday morning and that would permit yourself to go by train to your mountain home?

The Witness: How long will you be?

Mr. Weisman: Well, at least an hour or so.

The Witness: All right. Monday morning, then.

Mr. Weisman: Thank you.

Examiner Bennett: I don't know if that will be an hour or not.

Mr. Weisman: Well, maybe it will be more.

Examiner Bennett: Yes, maybe it will be less, too.

Mr. Weisman: Excuse me. I thought you meant I was not giving him sufficient time.

Examiner Bennett: Yes.

The Witness: I think on the whole I would
3605 rather have it this afternoon.

Examiner Bennett: I want to say to you that we are not going to continue these hearings indefinitely because of mere cross-examination. Now, you have just about had an hour on the direct examination to-day and all of the rest of the day, except the last 20 minutes, was spent on cross-examination. Any reasonable cross-examination is all right, but you cannot take up two or three days with a witness.

Mr. Weisman: I agree with you. Judge, here was a lot of stuff that went into evidence now, and I say to you in utter candor I didn't want to object to it. This wasn't proper redirect. It was direct examination. This stuff should have been gone into on direct. All of my associates jumped at me and
3606 said so.

Examiner Bennett: Those two exhibits were probably not proper.

Mr. Weisman: See? But I didn't object.

Examiner Bennett: I know you didn't object, and so you are cut off.

Mr. Weisman: Well, I know.

Examiner Bennett: You may cross-examine on them.

Mr. Weisman: But I haven't got time, I told your Honor.

Examiner Bennett: We are right here.

Mr. Weisman: I beg your Honor's indulgence. I expected an adjournment at 4.30. I will try to get through as rapidly Monday morning with this witness as possible.

Examiner Bennett: Well, I wish you would.

Mr. Weisman: And I give you my promise that I will write out my questions in advance. I will have them ready for him, and I just want to clear up the record with regard to these matters that have been introduced in evidence. 3608

Examiner Bennett: All right.

Mr. Haycraft: I just wanted to point out that these two pieces of evidence that he has referred to were simply a completion of the evidence that he put in evidence, exhibits he put in evidence himself to complete the story.

Mr. Weisman: They refer to his red carding. It should have gone in on direct, but I thought the Commission might just as well have them in, and I didn't object. I shouldn't be penalized therefor.

Examiner Bennett: All right.

Mr. Weisman: Thank you.

Examiner Bennett: You may cross-examine him for, let's see—oh, I guess it is about time. All right. We will adjourn until 10.30 Monday morning, next Monday morning. 3609

Mr. Weisman: That is 9.30 Standard Time?

Examiner Bennett: That is 9.30 Standard Time.

(Whereupon, at 4.30 o'clock P. M., July 31, 1936, the hearing in the above-entitled matter was adjourned.)

Court Room No. 313, U. S. Post Office Building,
Philadelphia, Pa., August 3, 1936.

Met pursuant to adjournment, 9.30 A. M.

Before: JOHN W. BENNETT, *Examiner.*

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

3611

MILTON C. WEISMAN, Esq., GEORGE FELDMAN, Esq., HERBERT S. KELLER, Esq., and M. A. ALBERT, Esq., appearing for the Fashion Originators Guild of America, Inc.

ALLEN S. OLMSTED 2nd, Esq., of Saul, Ewing, Remick & Saul, 2301 Packard Building, Philadelphia, Pa., appearing for John Wanamaker of Philadelphia.

MR. JAMISON of Sundheim, Folz & Sundheim, 1632 Bankers Securities Building, Philadelphia, Pa., appearing for Lit Brothers, Philadelphia.

PROCEEDINGS.

3612

Examiner Bennett: You may proceed.

Mr. Weisman: Thank you. May I have Commission's Exhibit No. 366?

(Exhibit referred to was handed to Mr. Weisman.)

HERBERT J. TILY resumed the stand and testified further as follows:

Recross-examination by Mr. Weisman.

Q. Mr. Tily, you testified that you received from the Fashion Originators Guild Commission's Exhibit No. 366? A. Yes, I don't know what it is, though, by number.

Q. Take a look at it. (Exhibit referred to was handed to the witness.) A. Yes.

Q. You identified this as having come personally to your attention? A. Yes.

Q. I notice that it is marked personally to your attention? A. (Witness n ds head affirmatively.) 3614

Q. I didn't hear your answer. A. Yes.

Q. When you received this—I will withdraw that. Have you got a copy of the answer that you made to this (referring to Commission's Exhibit No. 366)? A. It is in evidence.

Q. What paper do you say is in evidence which is an answer to this? A. As an answer to that?

Q. Yes. A. It was the one which we had written as to the number of people who were signatories to this new plan. It was—may I correct that? May I correct that?

Q. Certainly. A. That was at a time when the question of our joining was being debated, was being considered by us, and I had written that in an endeavor to get so far—as to the number of people who were signatories to this 3615 thing. They had given us until the 10th, my recollection is, and I am glad my recollection is also that I wrote that letter on the 6th of February, and that probably the same day or the day after, despite the fact that they asked for further information, we received word that we were red carded.

Q. Who did you receive word from? A. That. That letter which you—366.

Q. No. You added gratuitously to your answer, and not in answer to anything that I said, that you received word that you had been red carded. I didn't ask you that, but now since you volunteered that information, I would like to know from you from whom you received that word and in what form, if you please? A. We have a card which states that we were red carded.

Q. You say you have a card that states that you were red carded? A. (Witness nods head affirmatively.)

Q. Where is that card? A. I haven't it here.

Q. Have you ever seen such a card? A. I have.

Q. Has that gentleman who is going through his brief
3617 case got that card? A. I don't know, sir. I haven't seen him just this morning. I have been away.

Q. I am going to ask you this question, and please listen to it very carefully. You just made a statement that you learned you had been red carded by reason of the fact that shortly after February 6 you or your store received a red card from the Guild; is that so?

Mr. Haycraft: Oh, Mr. Examiner, he didn't say anything about receiving a red card from the Guild.

Mr. Weisman: Let's see.

Mr. Haycraft: I object to that question.

Mr. Weisman: Look——

Mr. Haycraft: That question contains language which the witness did not use.

3618 Mr. Weisman: Well, now, will you read the question?

Q. (Question read.) A. I don't know when we received it. I hadn't seen it. I didn't see the red card for some time. The fact is, what concerns me, we knew——

By Mr. Weisman.

Q. Wait a minute. You have already given me an answer. I see that your assistant, or someone working with

you, has from that brief case produced a red card which he has handed to Mr. Haycraft.

Mr. Weisman: May I have it?

Mr. Haycraft: No. The witness may have it.

Mr. Weisman: Oh, don't be so technical.

By Mr. Weisman.

Q. (Indicating) Is that what you are referrng to? A. That is the card.

Q. May I see it? A. If the attorney—if I am asked to show it.

Q. May I see the red card that was just handed you by Mr. Haycraft? 3620

Examiner Bennett: The Examiner says the Attorney has the right to see the card.

(The card referred to was handed to Mr. Weisman.)

(The card referred to, heretofore marked for identification Respondents' Exhibit 19, was marked as an exhibit and received in evidence.)

By Mr. Weisman.

Q. Mr. Tily, I show you Respondents' Exhibit 19. Do I understand you to say that your tore received from the Fashion Originators Guild of America——

3621

Mr. Haycraft: That is objected to. He did not say so.

Examiner Bennett: Well, let him answer, if he knows.

By Mr. Weisman.

Q. You may answer, the Court says. A. As to whether or not we received this card?

Q. Yes. A. I haven't the slightest knowledge of that.

Q. Where do you think you got it? A. I haven't the slightest notion of it. The first I saw of it was in our files that our attorney, one of our vice presidents, had.

Q. When was the first you saw it? A. Probably three or four weeks ago.

Q. Have you any idea how it came into your attorney's file? A. Not the slightest.

Q. Do you know whether or not Strawbridge & Clothier received that from the Fashion Originators Guild? A. I do not.

Q. Do you know whether or not the Fashion Originators
3623 Guild ever sent this out (indicating)? A. I do not.

Q. Do you know personally whether or not this red card was ever issued by the Fashion Originators Guild? A. I do not.

Mr. Weisman: I now move that all testimony of this witness as to red carding be stricken from the record. He says he knows nothing about it.

Examiner Bennett: It may stand.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Mr. Tily, you testified last week that as the head of this store you were interested in seeing that it kept its promises and lived up to all reasonable ethical concepts
3624 attaching to your business; is that so?

Mr. Haycraft: Objected to as being improper recross-examination.

Mr. Weisman: It is a foundation question.

Mr. Haycraft: I can't help it. It refers to a direct examination and not to recross-examination. It is not a proper foundation question.

Mr. Weisman: It refers to his cross-examination as to these documents.

Mr. Haycraft: Well, that is just the point. I object to it because it is not proper recross-examination. It is going back into old material, old testimony.

Examiner Bennett: You may recross-examine.

Mr. Weisman: I am laying a foundation for it.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: Yes. Well, I will sustain that objection.

Mr. Weisman: Exception.

Examiner Bennett: That has nothing to do with those papers. 3626

Mr. Weisman: Oh, yes, it has, because these papers say that they didn't do it.

Examiner Bennett: Go ahead.

By Mr. Weisman.

Q. In Commission's Exhibit No. 366, I notice this statement: "In addition, from time to time, your store has in other ways failed to refuse to co-operate with the Guild in its efforts to wipe out the nefarious practice of style piracy in the ready-to-wear industry." Do you remember that? A. The letter, yes.

Q. Well, didn't you think that was a rather serious criticism of your store? A. Yes, and a serious misstatement, too, I thought.

Q. Well, since you thought that it was a serious criticism, and since you thought it was, as you now added without my asking you, that it was a serious misstatement, didn't you, as the head of this store, think it encumbent upon you to deny such a serious criticism and serious misstatement? A. I thought it was useless to deny it. 3627

Q. That is the best explanation you can give for your failure to deny it; is that so? A. It is.

Q. In other words—now, I read this statement from the letter: "as your staff refused to co-operate apparently because they claim that your declaration does not cover the mechanics of co-operation, we are required in fairness to all other co-operating retailers to return your original declaration signed June 30, 1933, by Mr. Tily." You understood that, didn't you? A. Yes.

Q. And the understanding by you that these manufacturers were claiming that you had refused to co-operate, and that, therefore, they were returning this declaration of co-operation; is that so?

3629 Mr. Haycraft: I object to that. The exhibit speaks for itself.

Examiner Bennett: Yes.

Mr. Weisman: But not for the witness. Not for what he did when he got them; his conduct is not explained thereby.

Examiner Bennett: Your application to question the question along those lines is denied.

Mr. Weisman: I except.

By Mr. Weisman.

Q. When you received this new declaration of co-operation referred to in Commission's Exhibit No. 366, and referred to in Commission's Exhibit No. 364, did you personally read it? A. What is 364?

3630 Q. The letter of February 6. A. Did I personally read it?

Q. Yes. A. Yes.

Mr. Weisman: May we have the exhibit, consisting of the declaration?

(There was a discussion off the record.)

By Mr. Weisman.

Q. I hand you this document, Commission's Exhibits Nos. 367-A and 367-B, which is—I will ask you if that is what was contained in Commission's Exhibit No. 366? A. Yes.

Q. Is that the declaration that was therein contained, or is it a copy made by you? A. I do not know whether it was made by me, or whether it is just a copy—who made the copy, if they did.

Q. How do you know that it is a correct copy of the original? A. I do not know that.

Q. Did you testify last Friday in answer to Mr. Haycraft's question that it was a correct copy of the original? 3632
A. I have no recollection of having so testified.

Q. Did you identify this Commission's Exhibits 367-A and 367-B as being a correct of the original, or—as a correct copy of the original that you received enclosed in Commission's Exhibit No. 366? A. I did, it is in evidence.

Q. And if you did, is it true? A. That it is a correct copy?

Q. Yes. A. I have stated I do not absolutely know. I do not have the slightest idea.

Q. If you do not know, and do not have the slightest idea, how could you so testify?

Examiner Bennett: The testimony was it was his best recollection. I believe that is what he said.

Mr. Weisman: He is now saying he does not 3633
have the slightest idea.

Examiner Bennett: Proceed.

By Mr. Weisman.

Q. What was there which recalled to your mind that it is a copy of the original? A. The general conditions which I glanced over which were printed—as in general but not

in detail, but the total effect of it made further co-operation impossible, the total effect of it made further co-operation impossible.

Q. What was there in that that you say made further co-operation impossible? A. Of a number of conditions which after conversations with our people we found to be utterly impossible.

Q. As a result of that, you came to the conclusion that further co-operation with the Guild along the lines set forth in Commission's Exhibits 367-A and B was utterly impossible? A. Yes.

Q. Did you so notify the Guild? A. I did not.

3635 Q. Did you notify anybody else? A. No.

Q. Did you cause anybody else to notify the Guild? A. No.

Q. Did you think that that was your duty, having promised them to co-operate, did you think now, after arriving at the conclusion that further co-operation was utterly impossible, that it was your duty to advise them, or cause them to be advised? A. I did not think it was at all necessary. It was up to them, then.

Q. That is, you thought that you would just go on doing as you pleased without notifying them of your change in attitude? A. We run our business usually as we please.

Q. You run your business usually just as you please? A. Absolutely.

Q. In any event, through some channel the Guild found

3636 that you intended to no longer co-operate, did they? A. We found out that they did not intend to sell us any more goods.

Q. Why are you trying to hide? You knew that they did because you did not intend to co-operate for the elimination of style piracy; is that so? A. In the condition, the additional conditions they tried to have us co-operate with in the elimination of style piracy, it was utterly impossible for us to do.

Q. I show you respondents' Exhibit 19, and ask you whether or not you can read the words therein, "Definitely refused to co-operate"? A. Yes. That does not make it true.

Q. You have just made it true by your testimony. You have just said that you found it utterly impossible further to co-operate; so it was true, was it? A. You made it true. Your clients make it true.

Q. Irrespective of who made it true, if your refusal to co-operate was true—that was true, was it not? A. We made no statement of a refusal to co-operate.

Q. But you had a secret intent without telling anybody; is that it? A. Secret—what makes it secret? 3637

Q. If you do not tell anybody and keep it to yourself; is that your understanding of secret? A. We told a good many people in our own institution.

Q. But outside of your own institution you did not? A. No. It was none of their business.

Q. So, then, it was outside of your institution secret that you no longer were going to co-operate? A. If it is important, yes.

Q. Then, whether it is important or not, it is true? A. That is the fact.

Q. Why did you not say so instead of trying to spar with me? A. I like to hear you talk.

Q. You like to hear me talk? A. Oh, yes.

Q. Very well. 3639

Mr. Weisman: If you will advise the Court, and if the Court will grant your desire, if the Court will run along, I will talk to you about four hours or more, yet, but I am afraid your Honor will stop me. He says he is fencing with me and hiding and evading, side-stepping, and parrying because he likes to hear me talk. If your Honor has the same affection for the rasping sound of my voice, for which I

humbly apologize, I am willing to go on and give all of the enjoyment to this witness.

Examiner Bennett: I am not going to allow you to continue, Mr. Weisman, on any such basis as that.

By Mr. Weisman.

Q. I do not think his Honor would. I notice that the first point in this declaration of co-operation says as follows: "We do not and will not wilfully buy for our ready-to-wear departments any copies of merchandise created by present or future members of your Association in all
3641 price ranges, or those firms joined with you under the classification of 'Protective Affiliates.'" Did you object to that clause? A. We objected to the entire thing, to the new thing in its entirety.

Q. I want to find out just what particular thing there was new that you remember about it that you objected to? A. Nothing new that I recall, but we just objected to the entire thing.

Q. Since you agreed—first, let me ask you, is there anything new in No. 1 that you can think of? A. There is nothing new in No. 1 that I can think of.

Q. Then it must be the same? A. I think it is.

Q. Since you agree to No. 1, you did not, upon receipt thereof, have any objection to it that you can think of, is
3642 that true?

Mr. Haycraft: May the witness have a copy of the document counsel is reading from?

Mr. Weisman: Give him a copy. I have to have one copy myself.

Mr. Haycraft: I have the original here.

Mr. Weisman: I am reading it.

Mr. Haycraft: I want the witness to have it so he can know what is really in it.

Mr. Weisman: I resent that.

Mr. Haycraft: If you like. I want to object to this question as incompetent, irrelevant and immaterial, and not proper recross-examination, on the ground that it does not make any difference whether the witness accepted that desire or refusal to co-operate, so far as the issues in this case are concerned. What he did or did not do in that regard has nothing to do with it.

Mr. Weisman: What do you think about that?

Examiner Bennett: I will sustain the objection to going into every clause of this; this is not a declaration by the witness.

3644

Mr. Weisman: If your Honor please, this was submitted on redirect examination. I have not as yet had a chance to go into it.

Mr. Haycraft: Certainly it was submitted on redirect examination.

Mr. Weisman: He said because of that it was utterly impossible for him to co-operate. I want to see whether or not that statement is wholly founded upon some factual basis as set forth in the document, in detail, or if it is not a complete misapprehension of the document as it stands. I can only do that by going into the clauses of this document. After all, there are only eight of them and I can do it in two minutes.

Examiner Bennett: Sustained. 3645

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Mr. Tily——

Mr. Weisman: Well, maybe I can settle it this way. Mr. Haycraft, will you stipulate with me that he arbitrarily and capriciously and utterly without any reason, refused, without any good reason, to co-operate?

Mr. Haycraft: Certainly not. He refused because of the new conditions set forth in that. He has so testified.

Mr. Weisman: That makes it necessary for me to go into those, Mr. Examiner.

Examiner Bennett: You can go ahead and get from him what new conditions had been added. Let him go over the document in that fashion.

Mr. Weisman: I submit that I should be entitled to go into it in my own fashion and get it in my own way.

Examiner Bennett: I do not think you can go
3647 into it when you seek to go into it the longest way possible.

Mr. Weisman: Not at all, your Honor. I have no desire to go into it the longest way possible. I have no greater love for the sound of my voice than your Honor has, and I seek to get along as fast as possible, but it is necessary to adequately and properly defend my clients herein.

Examiner Bennett: I do not object to your voice. I do object to filling up the record.

By Mr. Weisman.

Q. Look at No. 2. A. I have not answered No. 1 as yet.

Mr. Weisman: I think the witness has answered
3648 No. 1. Let the reporter read the question and the answer, both.

(Question and answer read.)

By Mr. Weisman.

Q. So you did say "No"? A. That is the only thing—

Q. Is that the answer, "No"? A. May I correct my answer?

Q. Wait a minute.

The Witness: May I correct my answer, your Honor? I do not know whether he read it in its entirety or not.

Mr. Weisman: The reporter has just read back while you were watching the document, which is what I said. I submit that is a complete statement of what was said therein. You have had it before you while it was being read, anyhow.

By Mr. Weisman.

Q. Do you see anything that the reporter left out? A. No, I did not say—when you did not—I do not know whether you did say all. 3650

Q. What is that? I did not catch the significance of your answer. A. I did not know whether you said, or did not say, "In all price ranges," that was to be by us considered an impossible condition, no matter what else there was therein, that would have been enough because we felt it was impossible for you to defend us.

Q. So, when you got that far you were finished? A. No, I was not finished.

Q. You said that was enough? A. That was enough, but we read it all; but that was enough.

Q. You were of the opinion that the protection of originators' originations was good for the public and good for the store, of which you were the head, and good for the manufacturer; how do you explain to the Court that you did not make any explanation to the Guild setting forth the reasons why you did not want to sign this? 3651

Mr. Haycraft: That is objected to as incompetent, immaterial and irrelevant.

Mr. Weisman: It is a clear question of the credibility of the witness.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. As a matter of fact, your answer to the Guild did not object to Commission's Exhibits 367-A or 367-B at all, did it? A. No.

Q. No? A. No.

Q. The letter which you wrote merely said in words or substance, tell us who else signed the declaration of co-operation; is that the fact? Is that so? A. Correct. It did inquire as to who else had signed the declaration of co-operation.

Q. As a matter of fact, in your redirect examination you testified, did you not, that the new policy, or the policy that
3653 you denominated as "new" of the Fashion Originators Guild, had been inaugurated many months before you were what you were called "red carded"; is that so? A. "Inaugurated"—I do not recall the word. I think the question was, when did I hear of it?

Q. Well, let us read the question now. A. That is better for you to read what I actually said.

Q. I will be glad to do so.

Mr. Weisman: Mr. Haycraft, so you will know, I am reading question appearing at page 1889: "By Mr. Haycraft. Q. Mr. Tily, is what was, or when was there inaugurated a new policy by the Guild that you referred to in your testimony on cross-examination? A. Oh, I don't know exactly
3654 when, but it was a long while before our red carding. It was indicated in their new conditions here which they sent here for us to sign in this exhibit."

Mr. Haycraft: What page?

Mr. Weisman: Why don't you wait for me to finish my question before you ask what page it was? I told your what the page was at first. If you would pay attention instead of sitting there dreaming we could get along a little faster.

Mr. Haycraft: I am not the one who is dreaming. There is one dreaming, I think. What is the page?

Mr. Weisman: The page is 1889. I would appreciate it if you would be kind enough to wait until I finish my question. Now, I have lost my trend of thought, and I will have to repeat it all over again.

Mr. Haycraft: Isn't that too bad.

Mr. Weisman: Your lack of consideration for counsel makes itself more apparent every day.

By Mr. Weisman.

Q. I will read the question to you: "By Mr. Haycraft. Q. —Mr. Tily, is what was, or when was there inaugu- 3656
rated a new policy by the Guild that you referred to in your testimony on cross-examination? A. Oh, I don't know exactly when but it was a long while before our red carding. It was indicated in their new conditions here which they sent here for us to sign in this exhibit." I have read the question and the answer in its entirety so there will be no quarrel about it. Now, do you remember that the word "inaugurated" was used? A. I do not.

Q. Inaugurated? A. Inaugurated.

Q. Did you state that this new policy was inaugurated a long time before you were red carded? A. Some time before in the previous year.

Q. Did you say "a long time"? A. At some other time.

Q. Did you not answer to Mr. Haycraft that it was some 3657
other time, or that it seemed a long time, or that it was a long time? A. That I do not recall.

Q. You do not recall any of those expressions? A. No.

Q. Now that you do not recall it, which was it; did it only seem a long time, or was it a long time? A. "Long" is a very relative term.

Q. You used it. What did you mean that you thought it only seemed a long time, or that it was a long time? A. Some time before.

Q. Now, you have been with this store fifty-four years, have you not? A. That is a long time.

Q. That is a long time? A. Yes.

Q. So that in your judgment the period or intervals of time—referring to your judgment of the period or interval of time, the word, when you use it, "long," may be considerably greater than any consideration or construction that would be placed upon it by another person who had only been associated with your store a short time; would that not be your consideration and construction of the word "long," as you used it there; is that so? A. Well, some other person in the store might consider the word "long"
3659 to mean a different period of time from what I would mean it; I think that is a fair inference, yes.

Q. Now, when you said—first, did you say it was a long time?

Mr. Haycraft: I object. The testimony is all in here.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman:

Q. How long did you want to convey to the Court, and what period of time do you intend to convey to the Court when you used the words that it was a long time? A. Months.

3660 Q. Months, with the "s"? A. Yes.

Q. Pluralized? A. Yes.

Q. When you say "months," how many months do you mean? A. I do not know just how many I mean. It is a very indefinite thing in my mind, but just how long it was I could not say. It is very indefinite.

Q. If it is very indefinite, why did you say "long"?

Mr. Haycraft: That is objected to. I cannot see any probative value to this cross-examination.

Mr. Weisman: I did not think you would. It is very material to the question of the witness' credibility.

Mr. Haycraft: He is going into his recollection, and he testified two or three times as to that. I cannot see the probative value of it.

Mr. Weisman: He testified on his direct examination after a period of time, and did not use a definite period. I am trying to find out what he means by that.

Mr. Haycraft: That has been thoroughly gone into. No further questioning is necessary along that line. 3662

Mr. Weisman: I think the Court should be allowed to decide that. I do not know exactly what he meant by that. A long time. A long time may mean one thing to one person and another thing to another.

Examiner Bennett: Proceed.

By Mr. Weisman.

Q. You say it seemed a long time. It seemed a long time. And now you say it was months, and yet you do not have any hesitancy in stating in your answer to Mr. Haycraft that it was a long time.

Mr. Haycraft: I object to that question, too.

Mr. Weisman: It is not even finished. 3663

Mr. Haycraft: It is clear in the record—he has made the statement. I object to this as needless waste of time.

Mr. Weisman: Oh, no. He does not seem to know. I want to find out what he thinks when he comes in here and says it was a long time. I want to find out what degree of care and attention and value he is placing upon his own testimony so that

the Court may be able to determine it with more accuracy.

Mr. Haycraft: I think you have gone into this quite sufficiently. I think you have exhausted this entirely.

Mr. Weisman: You would be surprised to know how far from the fact it is that I have exhausted my possibilities to probe this witness. I am very far, I will assure you, Mr. Haycraft, from having exhausted my possibilities to probe this particular witness.

Mr. Haycraft: I object to any further interrogation on this point.

3665

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. So that this new policy, it was in any event inaugurated a long time before February 6, 1936; is that right? A. Is that your statement or mine?

Q. I want to know if that is the fact. A. If I said so, it is right.

Q. You still subscribe to it? A. The question of "long"—it has been ruled out by the Court, as I understand it: the length of time. I do not think I need to answer it.

Q. Oh, you do not think you need to answer it? A. No.

3666

Mr. Haycraft: I object to that question.

Mr. Weisman: If your Honor please——

By Mr. Weisman.

Q. I am not concerned with your understanding of the Court's ruling. I will get along with the Court myself.

Examiner Bennett: I think the witness should not argue with the attorney.

Mr. Weisman: Thank you, your Honor, for that direction to the witness.

Examiner Bennett: Is there an objection?

Mr. Haycraft: I object.

Examiner Bennett: Same ruling.

Mr. Weisman: I except. Your Honor, I want to know whether or not he subscribed on Monday to the statement that he made on the prior Friday, and I submit that is a perfectly proper line of interrogation on cross-examination. He made the statement, and I think it goes very clearly to the witness' recollection, and the weight, value, and credit that may be placed upon his testimony. It certainly goes 3668
to show his attitude here before the Court in the record, so that his entire disregard, apparently, of the seriousness of this investigation may be indicated in the record. Here we are having wild statements made by the witness at will upon almost any subject, and I think it should be fully developed upon the record because it certainly goes to discount his entire testimony.

Mr. Haycraft: I object. That is not a fair characterization of the witness' testimony, and I ask that it be stricken from the record.

Examiner Bennett: It may be stricken.

Mr. Weisman: I except. May I go into this line of interrogation further, your Honor?

Examiner Bennett: No. We will shut it out. 3669

Mr. Weisman: May I have an exception?

Examiner Bennett: Yes. I think we have gotten to the limit on that.

Mr. Weisman: Exception.

Examiner Bennett: Yes. Proceed.

By Mr. Weisman.

Q. In any event, did you try to find in any period of time prior to your red carding, and after the inauguration of this new policy, any way to, or did you try to comply with the new policy? A. The understanding of the new policy was that it included all price ranges.

Q. I did not ask you that.

Mr. Weisman: I ask that the answer be stricken out. The question is easily answered. It is a simple question.

3671 A. We did not try to, nor did we comply with the new policy.

By Mr. Weisman.

Q. So you can answer a question if you want to. A. Sometimes.

Q. So, in other words, you had failed to comply with the policy of the Fashion Originators Guild inaugurated in its efforts to stamp out style piracy for a long period of time before you were ultimately red carded; is that so?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will let him answer that.

By Mr. Weisman.

3672 Q. The Court says you may answer. A. I have forgotten the question.

Q. What? You have forgotten the question so soon? A. Well, that is what I told you.

Q. Do you want the question read? A. Yes.

Q. (Question read.) A. I have stated that we failed to comply with the price range because it was impossible.

Q. Don't you know that that question can be answered "yes" or "no"? A. I think——

Q. Don't you realize that all that question requires is a "yes" or "no"? A. Quite so.

Q. Won't you please answer it simply one way or the other, "yes" or "no" and let us go to something else? A. I cannot without a qualification.

Q. All right. A. That is the idea.

Q. On Friday you referred in your testimony to the Protective Affiliates, did you not? A. Yes, sir.

Mr. Weisman: I might say in the record that I think we will all concede that the words should have been "Protective Affiliates" and it appears as "Prospective Affiliates."

Mr. Haycraft: Yes. 3674

Examiner Bennett: Yes.

Mr. Weisman: I think it was just a mishearing by the operator, probably.

A. My understanding of it was that organizations similar to this having control of piece goods and the same operations as to style piracy.

By Mr. Weisman.

Q. In other words, when you said to Mr. Haycraft the following question and answer was made: "Q. The new conditions here you refer to. A. —that is exhibit—— Q. Commission's Exhibit 367-A. A. Yes, new agreement." Was that referring to Protective Affiliates, the first paragraph in this letter, Commission's Exhibit 367-A? A. Yes. 3675
At that time I had reference to the Protective Affiliates as set forth in the first paragraph of Commission's Exhibit No. 367-A.

By Mr. Weisman.

Q. You mean that you had objection to somebody who was engaged in the business of protecting piece goods; is

that so? A. Objection between the—objection to the combination between the Guild and the Affiliates.

Q. In other words, the word "Affiliates," or the phrase "Protective Affiliates"—first, what was—was this because of the Protective Affiliates—those piece goods people that you objected to going along with this, among other reasons, is that your new declaration? A. What is that question?

Q. In other words, the phrase "Protective Affiliates" you objected to this piece goods people going along, in connection with your many other reasons for objection to this new declaration? A. Protective Affiliates was not—

3677 Mr. Haycraft: That is objected to as not in accordance with the witness' testimony.

Mr. Weisman: Let the witness state.

Mr. Haycraft: I object to that.

Mr. Weisman: Let the witness finish his answer.

Mr. Haycraft: I do not think that is a proper question to answer.

Examiner Bennett: Oh, I will let him answer if he can give an answer to it.

A. (Continuing) Protective Affiliates was not a new condition as far as my knowledge was concerned.

By Mr. Weisman.

3678 Q. In other words, you had always known the Protective Affiliates of the Guild; is that right? A. I knew there was such an organization; I did not know who they were in detail, the members of it.

Q. You knew that those Protective Affiliates were people engaged in the sale of piece goods? A. Yes.

Q You knew that with the same degree of certainty as you have with regard to all the other matters about which you have testified here; is that so? A. Same degree?

Q. Yes. A. Yes, same degree.

Q. If, then—I will withdraw that. Mr. Tily, don't you know, or did not you ever inform yourself that Protective Affiliates has nothing to do in the slightest degree with piece goods?

Mr. Hayeraft: That is objected to.
Examiner Bennett: Sustained.
Mr. Weisman: Exception.

By Mr. Weisman.

Q. Are you, Mr. Tily, testifying as to facts that you know, or are you guessing while you are on the stand? A. I am endeavoring to testify to facts which I know.

3680

Q. And you say that we can thoroughly judge of your knowledge by your answer to me that the Protective Affiliates referred to people engaged in the piece goods business; is that a fair statement? A. It is a fair statement, yes.

Q. Well, suppose I were to say to you that the Protective Affiliates didn't have any reference of any kind, nature, or description to Protective Affiliates, then—I mean to people engaged in the piece goods business, then what would you as a fair and reasonable person think is the worth and value of all of your testimony? A. I had nothing to do with the piece goods?

Q. Yes. A. The copywriting of designs?

Q. That is right. A. With the copywriting of designs?

Q. Nothing to do with it at all. Then what would you say? A. I have been misinformed by somebody.

3681

Q. I see. That wasn't my question, whether you were misinformed. May I have the question read again to you?

(The question was read as follows: "Well, suppose I were to say to you that the Protective Affiliates didn't have any reference of any kind, nature, or description to Protective Affiliates, then—I mean to people engaged in the piece goods business, then

what would you as a fair and reasonable person think is the worth and value of all of your testimony?")

A. Ha, ha, I have been misinformed if they have nothing to do with the copywriting of designs which are—have to do with—not with the copywriting, with the protection of original designs by textile manufacturers.

Q. You would say, wouldn't you, as a fair minded person, that your testimony was a pretty poor performance, wouldn't you, if you had been so misinformed on so important a thing?

3683 Examiner Bennett: I am sustaining the objection to that line of questioning.

Mr. Weisman: All right. I think I have gone enough into that, your Honor.

Examiner Bennett: I don't see why the witness should be asked to get down on his knees and declare that he was all kinds of a chump and that his testimony was no good and all of that sort of thing.

Mr. Weisman: Maybe———

Examiner Bennett: I know, but if you want to argue that from the facts, is one thing, and it is perfectly proper to bring out the facts as a basis for argument. But this is not proper and you know it isn't proper to ask a question of the witness to tell about his own sins.

3684 Mr. Weisman: Frequently witnesses admit to their own sins and that helps give them absolution therefrom.

By Mr. Weisman.

Q. If you are mistaken about what you say wouldn't you want to tender an apology to the Guild?

Mr. Haycraft: Objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. I also understood you to testify that a further reason that you didn't want to go along with this Guild program was the inclusion therein of the so-called Fair Trade Practices; is that correct? A. Correct.

Q. As a matter of fact, have you any idea when the Guild adopted those Fair Trade Practices? A. These Fair Trade Practices which were in this new one seemed to be an extension of the old.

Q. Well, what Fair Trade Practices were there in this, 3686
and when you said "in this" I assume you referred to Commission's Exhibit No. 367, that you had objection to? A. May I see?

Q. Can you recall a single one, first? I want to see whether you can. A. The general—the whole general tone of the Fair Trade Practice was the subject of consideration and comment, not only in our store, but elsewhere.

Q. Well, since— A. And——

Q. Since it was the subject of comment in your own store, I want to see if you can remember a single item of the Fair Trade Practices that you say were matters of comment? A. And extension of the method of finding copies?

Q. Yes. A. A rather more rigorous insistence which 3687
wiped out our original qualification.

Q. I see. A. Exception.

Q. Well, let's see. When you referred to the Fair Trade Practice, you didn't mean, did you, something in addition to a program aimed at the elimination of style piracy, did you? A. Something other tha a program for the elimination of style piracy, no.

Q. Yes. You didn't refer, for example, to uniform discounts, or something of that kind? A. No.

Q. You only meant, then, in your testimony about additional Fair Trade Practices, the extension of the style piracy program. You didn't mean an additional program looking to the curing of some additional evils in the industry? A. The extension of style piracy program and the method of enforcement.

Q. Then your answer is "yes"; isn't that so? A. Yes.

Q. In other words, I want to get from you if it is a fact that when you used the words before last week, "additional fair trade practices," you didn't mean additional fair trade practices, but you meant additional ways, perhaps, of enforcing or extending the program of protection of original

3689 designs; isn't that so? A. Yes, by—considered unfair, consequently——

Q. Yes, I understand. A. That is the justification for the use of fair——

Q. Now, will you please listen to my question? I am going to ask the Court to have it repeated and see whether or not you can give me a categorical answer "yes" or "no." It is a simple question.

Mr. Haycraft: I am objecting to that, Mr. Examiner. The witness should be allowed to explain his answer.

Examiner Bennett: Sustained.

Mr. Weisman Exception.

3690 *By Mr. Weisman.*

Q. You don't know of any other fair trade practices that you objected to?

Mr. Haycraft: Further——

Q. —of the——

Examiner Bennett: Sustained.

Mr. Haycraft: — objecting.

Mr. Weisman: Well, I would like to finish my question.

Examiner Bennett: Yes.

By Mr. Weisman.

Q. When you said on your redirect examination in answer to Mr. Haycraft's questions that you found objection to the additional fair trade practices requested by the Guild, did you have in mind anything other than those matters which referred to the protection of style originations?

Mr. Haycraft: Objected to. It has already been answered. 3692

Examiner Bennett: Sustained.

Mr. Weisman: I respectfully except.

Examiner Bennett: All right.

Mr. Weisman: And make this offer of proof: That if the witness were permitted to answer, he would have said, "No."

Mr. Haycraft: He has already said so.

Mr. Weisman: I mean, it is not plain. This witness has hedged, and hemmed and hawed. I think on so important a matter we might have a direct answer.

Examiner Bennett: We spent an hour on cross-examination——

Mr. Weisman: Now, Judge, I think I ought to correct you. It has only been fifty minutes, and ten of those minutes, or fifteen, were taken up in argument with Mr. Haycraft, and not in examination of the witness. 3693

Examiner Bennett: That is your—hard luck. You might cut out the argument.

Mr. Weisman: I don't know whether it is hard luck. Luck is something that comes by chance. I am afraid that perhaps this comes to me by design.

By Mr. Weisman.

Q. With regard to Commission's Exhibit 364, you received an answer to that; didn't you?

Mr. Haycraft: That is objected to as not being proper recross-examination.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. I make this offer of proof: That if the witness had been directed to answer he would have answered in the affirmative.

Mr. Haycraft: He has already answered in his original examination.

3695 Mr. Weisman: What?

Mr. Haycraft: Original cross-examination.

Mr. Weisman: That is all.

Redirect examination by Mr. Haycraft.

Q. You were asked certain questions on recross-examination as to the correctness of your testimony, particularly with reference to the use of your understanding of the phrase "Protective Affiliates" as used in Commission's Exhibit No. 367-A and B. I will ask you——

Examiner Bennett: I sustain the objection.

Mr. Weisman: Thank you.

By Mr. Haycraft.

3696 Q. Mr. Tily, when you testified with respect to your understanding of Protective Affiliates, did you testify from your own knowledge, or from knowledge and information given you by others?

Mr. Weisman: Objected to. I thought your Honor sustained that objection.

Examiner Bennett: I sustained the objection

Mr. Weisman: Thank you.

Mr. Haycraft: I would like to make an offer to prove, Mr. Examiner, on that.

Examiner Bennett: You may have an exception.

Mr. Haycraft: I say, I would like to make an offer to prove.

Examiner Bennett: Yes, you may make an offer to prove.

Mr. Haycraft: Offer to prove that if the witness were allowed to answer that he would testify that his understanding of the Protective Affiliates was information given to him by others not within his own knowledge, by others outside of his organization and not within his own knowledge. 3698

Examiner Bennett: I see. All right.

By Mr. Haycraft:

Q. I will ask you now, Mr. Tily, as to the testimony that you gave on direct examination in this case and on redirect examination as well as cross-examination with respect to your own testimony, whether that was information within your knowledge or from employees within your organization.

Mr. Weisman: Object.

Q. —familiar with it?

Mr. Weisman: Objected to as incompetent, irrelevant and immaterial. 3699

Examiner Bennett: Sustained.

Mr. Haycraft: I want to make an offer of proof, that if the witness were allowed to testify that he would have testified that the information which he gave to his own organization was either information which he had of his own knowledge or was given to him in the usual course of business with subordinates in charge of the various divisions thereof.

3700

Mr. Weisman: Objected to as incompetent, irrelevant and I move that the offer of proof be stricken out as an improper offer of proof.

Examiner Bennett: I will let it stand.

Mr. Weisman: Exception.

Mr. Haycraft: That is all.

Mr. Weisman: That is all, Mr. Tily.

(Witness excused.)

Mr. Haycraft: May I have just a moment?

Examiner Bennett: Do you want a recess?

Mr. Haycraft: About four minutes.

3701

(There was a short recess taken.)

Examiner Bennett: You will be in order, please. You may resume, Mr. Haycraft.

CHARLES T. TAYLOR was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. Will you state your full name? A. Charles T. Taylor.

Q. Where do you reside? A. Penn Athletic Club.

3702

Q. Philadelphia? A. Yes.

Q. Occupation? A. Manager, basement store, Strawbridge & Clothier.

Q. How long have you been manager of the basement store of Strawbridge & Clothier? A. The latter part of January, 1936.

Q. Prior to that what was your occupation? A. I was divisional manager in charge of the dress group of departments in Strawbridge & Clothier store.

Mr. Weisman: Exception.

A. (Continued) Prior to the latter part of July, 1936, and as far back as January, 1933, I was in charge of the dress division of Strawbridge & Clothier.

By Mr. Haycraft.

Q. What types of dresses were within your supervision from July, 1933, to January, 1936? A. The type in reference to price and size?

Q. Yes. A. We carried all price dresses in my division, from the lowest price right up to over $100.

Q. That is the retail price? A. Yes.

Q. Can you testify as to the wholesale prices in your division? A. Wholesale price in any particular group of 3704
dresses?

Q. Do you have a division, a definite division dividing them up into groups, any scheme of that sort? A. Yes. We have them divided into the following groups: First, we have the Economy Dress Shop in which we carried dresses up to $12.95 at one time.

Q. That is the retail price? A. Yes, sir.

Q. What was the wholesale price of those dresses? A. Oh, they averaged up to $8.75.

Q. $8.75 and below? A. Yes, sir.

Q. All right. What was your other group that you had? A. The next group would be what we term the "Inexpensive Misses' Department" and the "Women's Inexpensive Dress Department." 3705

By Mr. Weisman.

Q. Is that one department? A. Two.

Q. Two? A. Two.

Q. Give us them one at a time. A. I did.

Q. You did? A. I said, "Inexpensive Misses' Department."

Q. Yes. A. "Inexpensive Women's Department."

Q. Those are the two? A. Yes.

By Mr. Haycraft.

Q. What price range? A. Retail?

Q. Yes. A. $9.95—from $19.75—there was some variation corresponding to the season of the year.

Q. What was the wholesale price of this type of dresses? A. Up to $13.75 cost.

Q. I take it that the price range was the same in both of these departments? A. Yes.

Q. Next? A. Next?

3707 Q. Yes. A. Then we had the Junior Misses' Dress Department.

Q. What was the price range there, both retail and wholesale? A. We took in retail from as low a price as the season required, which might be down to $2.95, excepting in clearances where they might go lower than that, and up to $100.

Q. What would be the range of the wholesale prices then? A. Up to about $70 cost.

Q. $70? A. $70, up to.

Q. Any other departments? A. Then we had our misses' better dress department, which we carried dresses retailing from $19.75 and up, with the exception of certain seasons, summer seasons, in which we permitted that de-

3708 partment to carry lower-priced dresses.

Q. And the wholesale price, what would be the wholesale price? A. Well, the wholesale price would depend upon the particular price range, the $100 dress, that might be up to $70 or up to $75, and on down the line.

Q. What was the beginning? A. The beginning on that was, on our $19.75 and selling—in other words, the selling price would be $19.75 and the wholesale price would be $13.75 and sometimes $12.75.

By Mr. Weisman.

Q. What was that? A. In that it would begin with, on that department, $19.75 selling price, and the wholesale price would be $13.75, and sometimes $14.75. Also, sometimes $12.75. The average would be $12.75.

Q. $12.75? A. Yes.

By Mr. Haycraft.

Q. $12.75 up, you say? A. The average would be about $12.75.

Q. Did you have any other department? A. Then we had the misses' better dress department in which we had, beginning with the same price ranges, and the same cost ranges, the same group of dresses; in other words, we had practically the same price ranges and the same cost ranges that we had in the other. 3710

Q. That is the same as in the women's department? A. Yes, sir; those two departments had about the same price ranges.

Q. For the sake of future reference, do you have numbers for the different departments? A. Yes, sir.

Q. What was the numbers? A. The Women's Better Dress Department, No. 331; the Misses' Better Dress Department, No. 350; the Women's Inexpensive Dress Department, No. 338; the Misses' Inexpensive Dress Department, No. 358; the Junior Dress Department, No. 371; the economy Dress Shop Department, No. 491. 3711

Q. Now, what were your particular duties in connection with that division in the various groups of dresses that you have referred to in your testimony? A. Supervising the buyers who bought these dresses.

Q. Anything else? Did you have anything to do with the sales? A. And to direct the selling of the dresses which were purchased—which we purchased.

Q. Now, in a general way where did you purchase the dresses that you sold in your division at the time that you became division manager?

Mr. Weisman: If he wants to qualify him, that is one thing, but this witness has not qualified that he had anything to do with that, that he did any purchasing at all.

Mr. Haycraft: He said that he supervised the buying. It seems to me that that is enough. I assume that that covers that completely.

Mr. Weisman: I might have an idea of what supervising would mean, and the witness might

3713 Supervising is a question of conclusion. I might supervise it in one way and he might supervise it in another way. If he has the facts I think we ought to have them.

Examiner Bennett: Yes. What he knows is important. We might as well determine it right here as any other time.

By Examiner Bennett.

Q. Did the buyers report to you? A. Yes, sir.

Q. Did they work under your direction? A. Yes, sir.

Q. Did they report all transactions to you? A. They were expected to; yes, sir.

Q. You had full charge of giving instructions as to the

3714 store policies? A. Yes, sir.

Examiner Bennett: I think he is qualified. Go ahead.

By Mr. Haycraft.

Q. Answer the question. A. I have answered the question. You mean——

Q. No, the last one I referred to. A. What is the last question.

Q. (Question read.) A. Meaning what markets or locations?

Q. Yes, what markets? A. New York principally.

Q. Did you do any buying in Boston or Chicago? A. In both cities.

By Mr. Haycraft.

Q. State first if you can give the extent from the standpoint of volume, and if so, you may do so. A. I cannot give the figures as to how much volume we placed in the respective markets. I cannot, offhand. I do not keep records of that kind.

Q. Well, can you testify as to the type of merchandise 3716
that you purchased in the other markets? A. Yes, sir.

Q. As to what merchandise did you purchase in Boston, first?

Mr. Weisman: I object to that as immaterial.

Examiner Bennett: Overruled. Go ahead.

Mr. Weisman: Exception.

A. Well, our Women's Better Dress Department enjoyed doing business with a number of manufacturers of women's better dresses in that market. Then, in addition, there were some manufacturers who manufactured dresses which would fall in our moderate-priced department, and we have also women's dress manufacturers—they were, I intended to say, also women's dress manufacturers, most of 3717
them were.

By Mr. Haycraft.

Q. Now, as to Chicago? A. In Chicago the market——

Mr. Weisman: Just a moment. May it please your Honor, I respectfully ask that the answer be stricken as irresponsive.

Examiner Bennett: Overruled. Go ahead.

Mr. Weisman: Exception.

A. (Continued) The Chicago market was used by our Women's Better Dress Department on certain types of merchandise.

By Mr. Haycraft.

Q. Can you describe the type, if you can? A. I think that was——

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant, and also ask the witness
3719 to wait until I make my objection.

Examiner Bennett: Overruled.

A. (Continued) We purchased the tailored type of dresses there, and also certain types of costume suits.

By Mr. Haycraft.

Q. You are speaking of the present time, or when you came with the firm? A. I am speaking of the time prior to January 1936.

Q. That is when you left that department? A. And as late as to-day we buy that same type there.

Q. Your testimony refers to the time that you were division manager? A. Only to that time, sir.

3720 Q. All right. A. Yes.

Q. Now, as to the type of garments that you bought from New York merchants in the New York market. A. The majority of the dresses which we sell in our store we are able to locate in the New York market.

Q. Is there any advantage in the New York market— A. There is.

Mr. Weisman: I object, if your Honor please.

By Mr. Haycraft.

Q. —as compared with the other markets? A. There is. The advantage is that there is a market close by and it costs us less to send buyers to that market than if we had to send them to the more distant markets.

Q. At the time that you became associated with Strawbridge & Clothier as divisional manager, in January, 1933, was this firm co-operating with the Fashion Originators Guild of America, Inc.? A. At that time there was no agreement between the store of Strawbridge & Clothier and the Fashion Originators Guild of America.

Q. Well, after you became divisional manager—strike that out. Before you became divisional manager were 3722
you familiar with the Fashion Originators Guild of America; did you know anything about it? A. No, sir. At the time I became divisional manager I did not know anything about the Fashion Originators Guild of America.

Q. When did you first become acquainted with its activities? A. Immediately—some time in the spring or summer of 1933.

Q. How did that come to your attention? A. My superiors by correspondence—I believe had correspondence with the Fashion Originators Guild of America, and they called me in to discuss certain matters pertaining to that organization.

By Mr. Haycraft. 3723

Q. I show you Commission's Exhibits 368 to 374 for Identification, both inclusive, and ask you if you can identify these papers? A. (Witness inspects papers.)

Q. The question is whether you can identify them. A. Yes.

Q. Yes? A. Yes.

Q. In what way can you identify them? A. What?

Q. What are they? A. They are letters which we received from manufacturers.

Q. Of dresses? A. Of dresses; yes, sir.

Q. On or about the dates indicated in each one? A. Yes, sir.

Q. Are they taken from the files of Strawbridge & Clothier Company? A. Yes, sir.

Q. They are? A. Yes, sir.

Q. Have you seen them before? A. Yes, sir.

Q. You have? A. Yes.

Q. When did you first see them? A. Shortly after the date which appears on these letters.

Mr. Haycraft: I offer in evidence at this time Commission's Exhibit 368, an original letter from
3725 Roth, Jackson & Immerman, Inc., New York, under date of June 29, 1933, addressed to Strawbridge & Clothier, Philadelphia, Pa.

I offer in evidence as Commission's Exhibit 369 for Identification a letter from Bender & Hamburger, Inc., an original letter, 525 Seventh Avenue, New York, dated June 29, 1933, with no address upon it.

I offer in evidence as Commission's Exhibit 370 for Identification, an original letter from Myron Herbert & Chas. Cooper, Inc., 1412 Broadway, New York, under date of June 27, 1933, addressed to Strawbridge & Clothier, Philadelphia, Pa.

I offer in evidence as Commission's Exhibit No.
3726 371 a letter from Kallman & Cohn, Inc., 1412 Broadway at 39th Street, New York, under date of June 29, 1933, addressed to Strawbridge & Clothier, Philadelphia, Pa.

I offer in evidence as Commission's Exhibit No. 372 for Identification a letter from Cohn & Holt, 1412 Broadway, New York, under date of June 29, 1933, to Strawbridge & Clothier.

I offer in evidence as Commission's Exhibit No. 373 for Identification an original letter from Milgrim, 6 West 57th Street, New York, under date of June 29, 1933, to Mr. F. W. Smith, Strawbridge & Clothier, Philadelphia, Pa.

I offer in evidence as Commission's Exhibit No. 374 for Identification an original letter from Ed. Gerrick Co., Inc., 550 Seventh Avenue, New York, under date of June 28, 1933.

Mr. Weisman: No objection to the receipt in evidence of any of these for the purposes for which they were offered.

(The letters referred to, heretofore marked for identification Commission's Exhibits 368, 369, 370, 371, 372, 373 and 374, were marked as exhibits and received in evidence.) 3727

By Mr. Haycraft.

Q. I show you Commission's Exhibit 362, which is a letter from Strawbridge & Clothier, Philadelphia, under date of June 30, 1933, to Fashion Originators Guild of America, 512 Seventh Avenue, New York City, and ask you if you are familiar with the letter; that is, have you ever seen it before? A. Yes, sir.

Q. Where did you first see that letter, or a copy of it?

Mr. Weisman: I object to that as immaterial; that is, the identification by this witness. It is already in evidence. Mr. Tily has testified to it, and that he wrote it and signed it, and that it was their original declaration of co-operation by Strawbridge & Clothier. He was asked if he had the ability to identify it, if he had sent it out, if he had seen it again, and as to what it was, and all that sort of thing. Now, if we are going to ask this 3729

fellow if he will identify it, if you ever received it, if you ever sent it back, if you ever saw it before, what it was, when it went out, what was done with it, all of those things, what useful purpose it could serve I have no idea, and I do not know why these questions are being asked unless it is just trying to waste time.

Examiner Bennett: What is the purport of it?

Mr. Haycraft: It is a foundation question.

Examiner Bennett: Do you want to further identify it?

Mr. Haycraft: This is merely a foundation ques-
3731 tion to fix the date as to what he did afterwards.

Mr. Weisman: He said when he first saw this.

Mr. Haycraft: I am just using this for the purpose of fixing the date.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. I saw it a few days before the date on which—before the date which appears on this letter.

By Mr. Haycraft.

Q. I will ask you the question again. Subsequent to that date, what instructions, if any, did you give your buyers, or other employees with your department, with
3732 respect to the stamp warranty clause on all orders placed with garment manufacturers reading as follows: "This order is placed on the seller's warranty that the above garments are original styles, created by the seller, unless identified by this order as a replica of foreign style creations. The purchaser reserves the right to return any merchandise which is not as warranted." A. I asked the buyers to see that that stamp was placed on all orders.

Q. Did you do anything else to carry out and co-operate with the Guild in its campaign against so-called "style

pirates" in conformance with Commission's Exhibit 362? A. I merely advised the buyers of the contents of this letter, and I asked them all to act in accordance with the agreement which our president had entered into.

Q. I call your attention to this language in the letter: "We, however, are to be the judges as to whether garments have been copied or pirated"—strike that out. "We do not and will not knowingly sell in our ladies' ready-to-wear departments any copies or pirated dresses of original garments created by any members of your Association." Do you remember calling the attention of your buyers to that clause? A. Yes.

Q. And, further: "We, however, are to be the judges 3734
as to whether garments have been copied or pirated." A. I called their attention to that.

Q. What steps did you take to determine whether or not the dresses which you returned to manufacturers were copies of garments created by members of the Fashion Originators Guild? A. At which time, Mr. Haycraft?

Q. At the time that you gave the instructions and subsequent thereto, and if there was a change, will you indicate the change, if possible? A. Well, I do not quite understand.

Q. Do you want the question read? A. Yes, sir.

Mr. Haycraft: I will ask the question be read.
(Question read.)

3735

By Mr. Haycraft.

Q. I will strike that out. Did you, as a matter of fact, subsequent to June, 1933, return garments to manufacturers pursuant to the understanding and agreement that you had with the Guild, and when I say "you," I mean the Fashion Originators Guild of America, Inc., as exemplified by Commission's Exhibit 362? A. What is that question?

Mr. Haycraft: Well, read the question to him. (Question read.)

A. We did return merchandise in accordance with that agreement.

Q. Did you——

Examiner Bennett: It is now 12.35. We will take a recess until 2 o'clock.

(Whereupon, at 12.35 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

3737

AFTERNOON SESSION.

Examiner Bennett: You may resume. Be in order, please.

Mr. Haycraft: What is the last question and answer?

(Question and answer were read.)

By Mr. Haycraft.

Q. Will you testify, Mr. Taylor, as to what the Guild did do to apprise you as to alleged—as to when a garment was to be returned to the manufacturer?

3738

Mr. Weisman: Just a moment. I believe Mr. Haycraft has perhaps forgotten that that testimony was directly covered on this witness' prior examination before lunch, and we had it in detail, and I object to the reiteration.

Mr. Haycraft: I do not so recall.

Mr. Weisman: I know. I imagined——

Examiner Bennett I will overrule the objection. Go ahead.

Mr. Weisman: Exception.

A. We received correspondence or letters from the Guild enclosing a form, and I believe at the early stages there a sketch of the style which the Guild claimed had been registered by one of its manufacturers of the members, and asking us to return merchandise, asking us to return any stock of that particular style we may have had on hand at that time.

Q. You identify that as letters from the Guild of the kind you just described? A. Yes.

Q. You received these, did you? A. Yes, sir.

Q. You saw them at the time, on or about the date of each exhibit? A. About that date, yes.

Mr. Haycraft: I offer these in evidence. 3740

Mr. Weisman: May I see them?

Mr. Haycraft: Commission's Exhibit No. 375 being an original letter from the Guild signed by Jack Goldston, dated January 24, 1934, and 376, being a letter from the same man, dated January 25, 1934.

Mr. Weisman: May it please your Honor, I object to the introduction of these letters into evidence on the ground that the sending of such letters has been entirely discontinued. Your Honor will notice that these letters are dated January 24 and January 25, 1934, respectively, and it merely shows what was done a matter of two and a half years ago. It is not the fact to-day. I so state for the 3741 record as an officer of this court.

May I hand the letters to you?

(The letters referred to were handed to the Examiner.)

Examiner Bennett: I thank you.

Mr. Weisman: You are welcome, sir.

May I further supplement my statement to the Court?

Examiner Bennett: Yes.

Mr. Weisman: Your Honor may recall on the direct testimony of the first witness tendered by the Commission, Mr. Post. He was queried on these forms of letters, and he stated that while that had been done from time to time, they had sent letters prior to his advent, that shortly after Mr. Post joined the Guild the practice of sending any such letters was completely abandoned. That was the Commission's own testimony. Under those circumstances I urge that as an additional reason that these exhibits should not go into evidence. They
3743 merely clutter up the record, and they are determinative of nothing, since it is something that happened and has long since ceased.

Examiner Bennett: Well, I think we will cover the whole field, tentatively, at least. I will overrule your objection and they may be received.

Mr. Weisman: Except on.

(The letters referred to, heretofore marked for identification Commission's Exhibits 375 and 376, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. Now, I show you Commission's Exhibits Nos. 377-A and B and 378-A and B and ask you if you can identify
3744 that as correspondence with the Guild on the question that you have been discussing in your last answer? A. Yes, sir.

Mr. Haycraft: I offer these in evidence.

Mr. Weisman: May I see them?

Mr. Haycraft: Commission's Exhibits No. 377-A being a sketch numbered 134, sketch of a dress; No. 377-B being an original letter from the Guild to Strawbridge & Clothier, dated June 18, 1934; 378-A

being another letter from the Guild to Strawbridge & Clothier, dated June 21, 1934; and 378-B being a reply thereto from Strawbridge & Clothier, dated June 23, 1934.

(Exhibits referred to were handed to Mr. Weisman.)

Mr. Weisman: Thank you.

These are similar letters, and on the grounds urged before, to wit, the permanent discontinuance thereof and the testimony of Mr. Post, I likewise object.

Examiner Bennett: Overruled. The letters are received in evidence. 3746

(The letters referred to, heretofore marked Commission's Exhibits 377-A, 377-B, 378-A and 378-B, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I show you now Commission's Exhibits Nos. 379, 380-A and B, 381-A and B and ask you if you can identify this as correspondence between Strawbridge & Clothier and the Guild with respect to the same subject-matter, that is, the return of the garments? A. Yes, sir. Yes.

Mr. Haycraft: I offer in evidence as Commission's Exhibit No. 379 a letter from Fashion Originators Guild of America, Inc., New York City, dated August 1, 1934, to Strawbridge & Clothier, Philadelphia, Pa., attention Mr. Taylor, Merchandise Manager. 3747

I offer in evidence as Commission's Exhibit No. 380-A, being a letter from Fashion Originators Guild of America, Inc., New York City, dated August 28, 1934, and addressed to Strawbridge & Clothier, Philadelphia, Pa., attention Mr. Taylor.

3748 *Charles T. Taylor—For Commission—Direct.*

I offer in evidence as Commission's Exhibit No. 380-B copy of a letter from Strawbridge & Clothier, under date of September 14, 1934, to Fashion Originators Guild of America, 512 Seventh Avenue, New York City, attention of Mr. J. M. Golby, replying to the previous exhibit.

I offer in evidence as Commission's Exhibit No. 381-A original letter from the Fashion Originators Guild, dated January 24, 1935.

I offer in evidence as Commission's Exhibit No. 381-B carbon copy of a letter from Strawbridge & Clothier to the Fashion Originators Guild, Mr.
3749 Jack Goldston, dated February 1, 1935.

Mr. Weisman: Wait just a moment. I think I want to get this straight. What is Commission's Exhibit 381-A—what is 378-A and 378-B?

The Reporter: The letter from Strawbridge & Clothier is 378-A and the reply is 378-B.

Mr. Weisman: What is 377?

The Reporter: 377-A is a sketch No. 134, sketch of a dress; and 377-B being the original letter.

Mr. Weisman: These letters are of the same purport, and I assume your Honor will have the ruling as before. I make the same objection.

Examiner Bennett: Overruled. They will be received in evidence.

3750 (Letters referred to, heretofore marked for identification Commission's Exhibits 379, 380-A, 380-B, 381-A and 381-B, were marked as exhibits and received in evidence.)

Mr. Haycraft: I ask that these documents be marked Commission's Exhibits 382 to and including 385.

By Mr. Haycraft.

Q. I will ask you, Mr. Taylor, whether or not the Guild used any other method of apprising Strawbridge & Clothier of the fact that there were garments to be returned to manufacturers which were alleged to be copies of garments manufactured by members of the Guild? A. Yes.

Q. What other method did they use? A. They had a representative in Philadelphia who would come into our store and inform us of copies and request that we send these copies back. "Shopper," I believe, they called her.

Q. Who was the shopper? A. I believe her name was Miss Joyce.

Q. Did you know whether or not, or did you ascertain 3752
whether or not there were garments in the store of Strawbridge & Clothier that she—Miss Joyce—thought were a copy of garments manufactured by members of the Guild?

Mr. Weisman: I object to that question as incompetent, immaterial and irrelevant and calling for the conclusion of the witness. Certainly in view of the stipulation it is immaterial in this case, your Honor.

Examner Bennett: Overruled.

Mr. Weisman: Exception.

(Question read.)

The Witness: The answer is "yes."

By Mr. Haycraft. 3753

Q. Yes? A. Yes.

Q. How did she determine it?

Mr. Weisman: I submit that that is a question which you have to have the first question previously foundation, and if you will refer to the first question that has been asked you will see that there is no foundation now that permits a question of that type.

I ask that those questions and answers be read.

(Questions and answers were read.)

Mr. Weisman: I submit that that is certainly no basis in the prior question for such a question as this.

Examiner Bennett: Read the question now pending.

(Question read.)

Mr. Haycraft: Will you read that again?

(Question again read.)

By Mr. Haycraft.

3755 Q. My question that I intended to ask you—that does not seem to be the one that I intended to ask you, as I listen to it now—was whether you knew or ascertained the method used by Miss Joyce in determining whether or not there were copies of Guild garments in your stock?

Mr. Weisman: I certainly object to that as calling for an answer which would call, indeed, not only for the operation alone of this witness' mind, but now he wants to know how did this some other person arrive at a certain conclusion, and I submit that it is clearly incompetent.

Examiner Bennett: Read the question.

(Question read.)

Mr. Weisman: I further submit in addition to
3756 the basic objections which I have already urged upon your Honor, which I am continuing to urge and now urge, certainly in view of the stipulation it does not make any difference how she determined. We have come to a stipulation in order to shorten this record, and that stipulation was that we were not going into the question of copies.

Examiner Bennett: I will ask that counsel ask what the shopper did.

Mr. Haycraft: That is all I want to know.

Mr. Weisman: If he asks him what she did, I will have to withdraw my objection.

Examiner Bennett: And if she stated anything to him, he could tell what she said.

Mr. Weisman: Let us have the time, please, and where.

By Examiner Bennett.

Q. Answer the question. A. I knew and I did. The time was in our business hours and place was in Strawbridge & Clothier's, third floor.

3758

Mr. Weisman: That is the time of their business hours, but your business has run for a good many years, and I think we ought to be allowed to know the year.

Mr. Haycraft: I am conducting this examination.

Mr. Weisman: That does not answer. We have the right to have that. The Examiner said we might have that information.

By Mr. Weisman:

Q. What we wanted to know was when that happened was that one month or six months, and just when it was so we can fix it.

3759

Mr. Weisman: I am trying to help you.

Mr. Haycraft: I do not think the witness needs it. We can get along all right without any assistance.

Mr. Weisman: I do not have the slightest doubt of it from your viewpoint.

3760 *Charles T. Taylor—For Commission—Direct.*

By Mr. Weisman.

Q. May we have the answer to that? A. The time that she shopped our numbers and apprised us of them was from the time that she came to Philadelphia and shopped our store until the time that we were red carded.

By Mr. Haycraft.

Q. I want to ask you a question now. Do you know when she first came into your store? A. I do not know.
Q. Can you give us an approximate idea?

3761 Mr. Weisman: I object to that. The witness has just said that he did not know. Now, to ask him what he knows approximately is simply to cause him to speculate.

Examiner Bennett: There is a difference. He may answer. Overruled.

Mr. Weisman: Exception.

A. I believe it was in the fall of 1935.

By Mr. Haycraft.

Q. What did she do? A. She would review our stock and look for copies. If she found what she believed was copies, she would call our attention to them.

3762 Mr. Weisman: I ask that the words "she would review our stock, and if she"—I believe he said "she would review our stock and look for copies: If she found what she believed was copies, she would call our attention to them." I ask that that be stricken out as a statement or conclusion of this witness as to the mental operation of somebody else's mind.

Examiner Bennett: Well, so far as reviewing the stock, of course that is not a conclusion.

What she arrived at, what conclusion she arrived at I think can be told better by what she told the witness if she said anything to him, and what she said to him was, possibly, "This and this and this are copies," and if she made any statements to him he can testify as to the statements.

By Mr. Haycraft.

Q. I will ask you to testify as to what she did without stating in your answer any thoughts that might have been in her mind, but restrict yourself to what she did physically, and what she may have said to you orally. A. She shopped our stock. She would take up certain styles from 3764
our stock, she would compare our styles with certain sketches which she had in her possession. Then, she would ask us to return those particular dresses, those particular styles.

By Mr. Weisman.

Q. What do you mean when you say "those particular styles"? A. The ones she picked out.

Q. As being copies? A. Yes, sir.

Q. Then you would get the proof of that?

Mr. Haycraft: Just a moment. I am conducting this examination.

Mr. Weisman: I was just trying to save time. Excuse me. I will go into it on cross-examination 3765
and we can drag this thing out if you insist; I certainly do not want to.

By Mr. Haycraft.

Q. When she asked you to return them to the manufacturer, did you do so? A. We did at first.

Q. Did there later come a time when you did not? A. Yes, sir.

Q. When was that? A. That was later on after she started the shopping.

Q. Can you give us the approximate date that you did not return the garments called to your attention by Miss Joyce as being copies of Guild merchandise? A. That was some time in the year of 1935. That was when she called our attention to certain numbers and we doubted that they were copies of styles originated by members of the Fashion Originators Guild of America, Inc. We took them off sale and we shopped our competitors and we also apprised our New York office to ascertain certain facts—in other words we took the stand that we were going to judge as to
3767 whether or not there were copies and not merely take the word of some shopper or some association that they were copies.

Mr. Weisman: May your Honor please, I respectfully ask that all of this testimony be stricken out as clearly irresponsive to the testimony. As I recall the question, he was asked when, and he is now proceeding to give us a long explanation and telling us what he told the New York office, and what he intended to do, and what he did not intend to do, and what he did not intend to allow somebody else to do.

The Witness: Well, may I correct my answer?

Mr. Weisman: Wait a minute. When I am addressing the Court, that is a prerogative that I
3768 cherish most highly.

The Witness: Very well.

Examiner Bennett: The rest of it may be stricken out except that part of the answer which reads "That was some time in the fall of 1935." The remainder may be stricken out.

(Letters referred to, heretofore marked for identification Commission's Exhibits 382-A, 382-B, 382-C, 382-D, 382-E, 383, 384 and 385, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. Why did you not return copies to which Miss Joyce directed your attention?

Mr. Weisman: I object to that as immaterial, your Honor. We are now once more on this question of copies.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. Because in our original agreement we had reserved the right to determine whether or not they were copies,

By Mr. Haycraft. 3770

Q. Well, now, when you took that position what occurred with respect to the relations between you and the Guild? A. As a result of that, I had a meeting with Mr. Post in New York, discussed that particular matter.

Q. At this meeting with Mr. Post, will you state what you said and what Mr. Post said on this question?

Mr. Weisman: May we have the date and the place of this conference, Judge?

Examiner Bennett: Beg pardon?

Mr. Weisman: The date and the place of this conference?

Examiner Bennett: Well, as near as he can get it.

Mr. Weisman: Yes. 3771

A. I think I can get the date, your Honor, if you demand it. I think I have correspondence.

Examiner Bennett: Well, give it as close as you can.

The Witness: It was somewhere in the fall of 1935.

Examiner Bennett: Can you be more specific? What month?

The Witness: September, October or November; one of those three months, perhaps earlier, I am not sure.

Mr. Weisman: Well, the Court has also asked you to tell where the conference took place.

The Witness: At the Hotel Astor, New York, at luncheon.

By Mr. Haycraft.

Q. Who was present besides you and Mr. Post, if any-
3773 body? A. Mr. Vakchambers and—Mr. Vakchambers.

Q. Who is he? A. Vakchambers. He is connected with the Associated Merchandising Corporation.

Q. In New York? A. Yes, in New York.

Q. All right. Now proceed. A. Mr. Post wanted to know why we were not returning merchandise which their shopper asked us to return. I explained to him that we had found that we had been called upon to return certain styles which, in our judgment, we had not agreed to return. In our original agreement—that we found it necessary to more carefully go into the question of whether or not the garments which the Guild representative asked us to return should be returned. He felt that—he stated that we were the only store that took that position; that the
3774 rest of the retailers in the country were willing to return merchandise as long as their shopper asked, and he couldn't understand why we wished to ask or take an exception to the general procedure which was followed by the Guild and the stores. And then I told him of the experiences we had on certain styles, and he agreed that we follow a certain—follow a certain procedure before we made any further returns.

Q. What was the procedure? A. The procedure was that we take off sale any styles which his shopper asked

us to return; that we were to notify—that we were to notify the Guild why we did not think it should be returned instead of merely returning it as had been the custom.

Q. What should happen under the agreement? A. Well, in following that procedure—we had a right to say when a style was a copy and when it wasn't, or, at least, we had something to say as to what we would remove from sale and send back to manufacturers.

Q. Did you follow that procedure then for some time? A. Yes, sir.

Q. For how long? A. We followed that procedure right up to the time we were red carded. 3776

Q. When were you red carded? A. In February, 1936.

Q. Do you know the circumstances under which you were red carded; that is, from your standpoint? A. I do not.

Q. Do you know the transaction that was pending at the time that you were red carded? A. I do not.

Q. You were not in that department at that time? A. No, sir.

Q. I show you Commission's Exhibit No. 382-A to E for Identification and ask you if you can identify that as correspondence between the Guild and your store on this question of returns? A. Yes, sir.

By Mr. Haycraft.

Q. Mr. Taylor, I call your attention to Commission's 3777 Exhibits 393-A and B, 394 and 395. A. Yes.

Q. I call your attention to the use of the word "slips" in these exhibits, and ask you if that has reference to the use in the context of these letters to any particular type of slip, and if so, if you can explain what it is? A. I am sorry. I did not get the question.

Q. Referring to Commission's Exhibits 393-A and B, 394 and 395, I call those to your attention and therein to

the use of the word "slips" in these exhibits. I ask you what that word refers to as used in the context of these letters? A. It refers to a slip which was taken out of a book carried by the shopper, and these slips with the certain notations on them were made by the shopper, and in turn we were asked to sign it, and the other copy, a duplicate copy, remained in the book; that was another copy

By Mr. Haycraft:

Q. I show you Commission's Exhibit 359, and ask you if that is the slip, or a slip of the type of slip that you had reference to in your answer previously given? A.
3779 This is the same type of slip.

Mr. Weisman: Now, if your Honor please, the witness has now identified the slip as the slip that is already in evidence, and a good lawyer and any lawyer does not have to be a mind reader or a prestidigitator to know what was in evidence, and I move to strike it out, the answer of the witness, in which he attempts to describe the contents of a slip, on the ground that the slip itself is the best evidence, and the slip is in evidence.

Mr. Haycraft: The witness did not describe the contents of the slip. That is where you made your mistake again.

Mr. Weisman: His answer is one which would
3780 constitute that very thing.

Examiner Bennett: Read the answer.

(Answer read.)

Examiner Bennett: Denied. The rest of this discussion is off the record.)

(There was a discussion off the record.)

Examiner Bennett: The question was perfectly proper. The answer was also perfectly proper. He was asked concerning the slip, and his answer was

concerning the operations which took place in connection therewith.

Mr. Weisman: I am sorry to differ with your Honor but I must. I ask an exception.

Examiner Bennett: Noted.

By Mr. Haycraft.

Q. I will ask you what the fact is with respect to your knowledge of the relations between the Guild and Strawbridge & Clothier subsequent to January 1, 1936?

Mr. Weisman: I object as not proper direct examination, now having refreshed the witness' mind by an ex parte statement not made under oath, he now proceeds to go on and seeks to contradict something that he said before, and I submit it is highly improper and ask that the question be excluded. 3782

By Examiner Bennett.

Q. Is it your recollection? A. As to what?

Q. Has your recollection been refreshed so that you can testify on that proposition? A. Sir, I do not believe that I said January 1. I did say, and I believe I did say after January.

Mr. Haycraft: That is probably what my understanding should have been. I was a little confused about it, and I just wanted to clear it up.

Examiner Bennett: Yes. After January is what I recall. 3783

By Mr. Haycraft.

Q. In other words, you did have knowledge about the relations between the Guild and Strawbridge & Clothier during the month of January, 1936? A. Yes, sir.

Examiner Bennett: I think that is what he testified to in the beginning. That is the way I understood.

Mr. Weisman: I object.

Examiner Bennett: Now, I have no record of what was done with Commission's Exhibits 383, 384 and 385. What was done with them? Were they offered in evidence?

Mr. Haycraft: I think they are in the record, if your Honor please. I am not certain about it and I will check that matter up.

Examiner Bennett: You may do so. We will take a recess for ten minutes.

3785

(There was a short recess taken.)

Examiner Bennett: All right.

By Mr. Haycraft.

Q. From January 1, 1933, until February, 1936, who was your superior officer at Strawbridge & Clothier? A. Mr. Frank Smith.

Q. What is his title? A. He is the general merchandise manager of the store.

Q. Did you report to him what you did? A. Yes, sir.

Q. Did you report to anyone else in the organization? A. I took up all matters through Mr. Smith, with Mr. Smith.

Q. Did you have an assistant during that time? A. No, sir.

3786

Q. Do you recall the buyers that worked under your supervision during that period of time? A. Yes, sir.

Q. Will you name them and give the different departments that they represented in their activities? A. 331 Department, Women's Better Dresses, Miss Flynn.

Mr. Weisman: Who?

The Witness: Miss Flynn.

350 Department, Misses' Better Dresses, Miss Ransdell. In that department there was a change somewhere about January or February. I believe it was in January. And we had a new buyer there, a Miss- -ah, ah, ah——

Mr. Haycraft: May I suggest to the witness——

The Witness: I will come back to her in a minute.

Mr. Haycraft: May I suggest the name to the witness?

Mr. Weisman: Certainly.

By Mr. Haycraft.

Q. Miss MacAlney. A. Miss MacAlney. 3788

Mr. Weisman: Would you also suggest to him that he tell us whether January or February was 1936, or three or four or five?

Mr. Haycraft: No. I will let him testify to that himself.

Mr. Weisman: I said that you suggest that he tell us.

The Witness: '36.

By Mr. Haycraft.

Q. All right. Proceed. A. 338, Women's—Women's Inexpensive Dress Department. And 358, Misses' Inexpensive Dress Department, Mr. Cohn.

Mr. Weisman: Wait a minute. 338 and what? 3789

The Witness: And 358.

Mr. Weisman: What was the name?

The Witness: Mr. Cohn.

Mr. Weisman: C-o-l-e?

The Witness: C-o-h-n.

371 Department, Junior Miss Department, Miss Morgan.

Mr. Weisman: Morgan.

The Witness: 491 Department, Economy Dress Shop, Mr. March.

492 Department, Daytime Dress Department, Mr. Chance.

Mr. Weisman: Mr. who?

The Witness: Mr. Chance.

By Mr. Haycraft.

Q. I don't believe that you mentioned that before. What price range was that? A. That takes in the Daytime Dress Section in which we carry dresses up to no limit on price, but there are certain types of cotton dresses that we place
3791 in there. The business is principally done on the uniform house dress, cotton dress line of goods.

Q. Did Mr. Chance have any other duty besides? A. Just buyer of Departments 492 and 493. 493 is your uniform department, uniform and apron department.

Q. Who succeeded you when you left as the supervisor of that group? A. Mr. Chance.

Q. Mr. Chance succeeded you? A. Yes, sir.

Q. Is he now in charge of that department? A. Yes, sir.

Mr. Weisman: What department?

The Witness: He is in charge of the group of departments which were under my supervision up until about February 1, 1936.

3792

By Mr. Haycraft.

Q. Can you testify, or have you made any research so that you may testify as to the number of garments that were returned to manufacturers pursuant to the direction of the Guild?

Mr. Weisman: Oh, no. I submit that that question was entirely incompetent, immaterial and irrelevant, contrary to the facts. Both the eminent

Mr. Tily and this witness have testified that no dress was returned until they were proven to be copies. Now we are having this issue brought in by detail again. I again object both on the grounds that the stipulation doesn't permit it, and, furthermore, this witness has testified that he wouldn't return anything until it was proven that that was a copy, that that was the right that they reserved; and, second, Mr. Tily in his testimony was very explicit and direct on that point. And I submit that this question is entirely improper, and improperly framed.

Examiner Bennett: Overruled. 3794

Mr. Weisman: Exception.

The Witness: Will you repeat the question?

(Question read.)

A. I wouldn't know as to the number. I know there were dresses returned.

Mr. Weisman: I ask that the answer be stricken out as irresponsive.

Examiner Bennett: It may stand.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Is there anyone in your organization that does know who would have that information? A. I believe there are records available, and Mr. Chance may know. 3795

Q. Well, now, directing your attention again to Commission's Exhibit No. 362, the letter of June 30, 1933, from Mr. Tily to the Guild, I will ask you whether or not you were consulted with respect to the sending of that letter, or one similar to it to the Guild?

Mr. Weisman: Objected to.

A. Yes, sir.

By Mr. Haycraft.

Q. Where did this conference take place?

Mr. Weisman: Objected to as being incompetent, immaterial and irrelevant.

Examiner Bennett: Overruled.

Mr. Weisman: We weren't present. Exception.

A. Mr. Frank Smith's office.

By Mr. Haycraft.

Q. Can you give us the approximate date?

3797 Mr. Weisman: I object to it as incompetent, immaterial and irrelevant.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. Just a short time before the date which appears on that letter.

By Mr. Haycraft.

Q. Had you made an investigation with respect to the situation involved in that letter?

Mr. Weisman: I object to it as being incompetent, immaterial, calling for a conclusion of the witness.

3798 Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. Yes, sir.

By Mr. Haycraft.

Q. What investigation did you make?

Mr. Weisman: Objected to as immaterial.

Examiner Bennett: Overruled.

Mr. Weisman: Incompetent. Exception.

A. Investigated as to what volume of business the Guild members, the ten Guild members—I tried to estimate how much volume the members of the Guild at that time did, and then what priced merchandise they made, and what effect it would have on our business if we signed it, and if we didn't sign it.

By Mr. Haycraft.

Q. Now, then, as a result of the investigation that you made, did you report the conditions that you found to Mr. Tily? A. Yes, sir.

By Mr. Haycraft. 3800

Q. What did you find and what did you report, Mr. Taylor, as to the percentage of your business of purchases from Guild manufacturers at that time?

Mr. Weisman: Objected to on the ground that it is incompetent, immaterial and irrelevant, and the question is in improper form.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. I found that the volume of business which we did in the price ranges, and which the Guild members at that time were active in, was a very, very small percentage of our business.

3801

By Mr. Haycraft.

Q. Can you give us an estimate of the percentage? A. Well, it was no greater than 5 per cent. I believe that is about what it was.

Q. Now, since that time did the membership of the Guild— A. Yes, sir.

Q. First, I will ask you this: I show you Commission's Exhibits 399-A and 399-B and ask you if you can identify

that in any way? A. Well, I have seen this letterhead, and I have seen the various manufacturers on there, those manufacturers' names on this letter—letterhead.

Q. I call your attention to certain pencil marks striking out names on 399-B. Does that indicate anything to you? A. No.

Q. No? A. No.

Q. Have you had an occasion to make a study to determine what percentage of the business—dress business—was done with Guild manufacturers, say, on or about January, 1936? A. I did not make a study; no, sir.

Q. Do you know of anyone in your organization that has done so and could testify? A. Made in January.

3803

Q. On or about that time, January or February? A. Well, I do not know what study was made in February in regard to Guild manufacturers, sir. I do not recall of an investigation or study being made in those months of January or February.

Q. Going back, again, to the time in 1933 in the investigation that you made, did you consult with merchandise managers of other retail stores?

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant, and no proper foundation laid. The question is obviously without meaning. He says that in 1933 the witness testified that he made a study. I do not know what it is—about which he tried to estimate the volume done in his own business, and now he is asking him if in making a study of his own business, did he speak to members of some other retail establishment, and I submit that I cannot see the relevancy or the competency of any of this testimony, and I must respectfully object to it.

3804

Examiner Bennett: I will sustain the objection.

Mr. Weisman: Thank you.

By Mr. Haycraft.

Q. You may answer— A. I——

Mr. Weisman: I object.

Examiner Bennett: I sustained the objection.

By Mr. Haycraft.

Q. I will ask you this, Mr. Taylor: Were you advised that the Guild had taken in—strike that out. At the time in June, 1933, what was the price range of the garment manufacturers that were members of the Guild?

Mr. Weisman: If he knows. The question is asking for a fact and I want to say to your Honor 3806
that the witness does not know, and I will be prepared to show so.

Examiner Bennett: Yes. I think it would be well to lay a preliminary foundation for that, Mr. Haycraft. Sustained.

By Mr. Haycraft.

Q. Did you make any investigation to determine the price range of the manufacturers who were members of the Guild in 1933? A. Yes.

Q. Yes? A. Yes.

Q. What was that price range?

Mr. Weisman: I do not know what investigation he made. He may have made an investigation by 3807
trying to read the stars or reading a crystal, or going into a trance, or something of that kind.

By Examiner Bennett.

Q. I will find out what you know. Did you learn what the members did, and if so, how? A. It was a list of manufacturers who were listed as having been and were members of the Guild. I took that list and I reviewed that list

with our buyers and I asked each buyer what merchandise, what priced merchandise that he or she might be purchasing from those particular manufacturers, and from them I learned the price group of merchandise which they bought from the Guild was priced from $16.75 and up—from Guild members—with the exception of certain times in the year when those Guild members might have made lower priced merchandise.

By Mr. Haycraft.

Q. Since June, 1933, have you made any investigation, or have you attempted to find out whether that same price
3809 range is observed among the members of the Guild? A. Yes.

Q. What is the result of your investigation? A. That same price range is not observed in the Guild.

Q. Not? A. Not.

Q. What change has taken place? A. The Guild has increased its membership and taken in manufacturers who make—manufacture dresses in lower priced brackets.

Q. How low? A. I believe they take in all price ranges now.

Q. You believe they take in all price ranges now?

Mr. Weisman: I object to the witness stating what he believes; if he knows, let him state it. That is a matter of fact which may be determined with
3810 exact certainty, and I do not think we should have those speculations in the record. May we have the basis of that belief, your Honor, in the record? I think it is only fair.

Examiner Bennett: He stated in his opinion they took in all price ranges. I do not know whether it is correct or not.

By Mr. Haycraft.

Q. When did that change take place in your—strike that out. When did it come to your knowledge that they had lowered the brackets? A. During the fall of 1935.

Q. Fall of '35? A. Yes.

Q. Before the fall of 1935, what was the lowest wholesale price the dress manufacturers, who were Guild members, sold dresses, to your knowledge? A. Prior to the time when they took in all price ranges they went down to $6.75, either $6.75 or $7.75.

Q. Before that, what was the lowest? A. $10.75.

Q. During 1933 and during 1934, and up to the middle of 1935, what was the lowest wholesale price of Guild 3812
members? A. Up to what point, sir?

Q. Say the early summer of 1935. A. It may have been in the summer months when that evolution started taking place.

Q. Then, what was the price before this evolution took place; what was the lowest price? A. It was either $6.75 or $7.75.

Q. Now, what—strike that out. Did this change in the wholesale price, the price range of manufacturers that were members of the Guild, have any effect upon the dress departments that you had under your supervision?

Mr. Weisman: I object to that as incompetent, irrelevant and immaterial.

Mr. Haycraft: I will direct your attention to 3813
the fact that he answered the question as to the returns that were made pursuant to the request of the Guild.

Mr. Weisman: I still urge my objection. The witness a few moments ago stated that he did not know the number of returns that were made.

By Examiner Bennett.

Q. Do you know whether it had any effect? A. Yes, sir.

Q. You do know? A. Yes, sir.

Examiner Bennett: He may answer.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

By Mr. Haycraft.

Q. Go ahead. A. Returns increased.

Q. Returns increased? A. Yes, sir.

3815 Q. Why was that true? A. Because it took in the price lines in which our store was more active in.

Q. I call your attention to Commission's Exhibit No. 399-A and also Exhibit No. 399-B and ask you if you can give me the date or the approximate date that you received that letter-form from the Guild? A. I cannot say.

Q. I direct your attention, to refresh your recollection on that, to the printed matter on the left-hand column of Commission's Exhibit No. 399-A. Does that refresh your memory? A. I cannot place the time. It may have been in the spring of 1935.

Q. You say it was in the spring of the year 1935? A. What?

Q. Would you say it was in the year of 1935?

3816 Mr. Weisman: I object to counsel quarreling with his witness. He says this does not refresh his recollection. I do not blame him. There is nothing on the exhibit from which he can refresh his recollection.

Mr. Haycraft: Oh, yes, there is, and he said he could refresh his recollection from it. He did state the time. He has just now testified that he did.

Mr. Weisman: I did not hear him. I have good ears. If you can hear that you are certainly hearing the sounds of mental operations rather than spoken words. This witness just looked at it and it does not refresh his recollection. He has looked at it and it does not refresh his recollection and he wants to be left alo.

By Examiner Bennett:

Q. Does it refresh your recollection or does it not? A. It does.

Q. It refreshes your recollection? A. Yes, sir.

Q. When? A. I believe I received this in the spring— 3818
in the early part of 1935.

Mr. Haycraft: I offer this in evidence.

Mr. Weisman: May I examine it? Here is a blank piece of paper. I ask your Honor's permission to examine on the voir dire.

Examiner Bennett: Granted.

By Mr. Weisman.

Q. Are you certain that you received that? A. Yes, sir.

Q. Where did you receive it? A. From the Fashion Originators Guild of America, Inc., at New York.

Q. It was enclosed in an envelope? A. Yes, sir.

3819

Mr. Weisman: All right. No objection.

Will your Honor take a look at it? It is nothing but a blank sheet of paper with nothing on either side of it. How on earth anybody could identify it as to any period of time is beyond me.

Why anybody should send it to anybody is further just as difficult for me to fathom.

Examiner Bennett: He identified it. It will be received in evidence.

(The front of a letterhead and the back of the letterhead was marked Commission's Exhibits 399-A and 399-B and were received in evidence.)

Examiner Bennett: Proceed.

By Mr. Haycraft.

Q. I will ask you whether or not this increase in numbers of members of the Guild to include lower bracketed lines of dresses which you have indicated in your recent
3821 answers had anything to do with the co-operation that you were giving the Guild in returning dresses to manufacturers that they claimed to be copies of dresses manufactured by members of the Guild?

Mr. Weisman: I object. The question has already been answered. He said that they had made returns, and that the returns of dresses had increased since more dresses were involved. What is the use of simply encumbering the record and taking up unnecessary time? This appears to me to be not only iteration but reiteration and re-reiteration of the very worst type.

Examiner Bennett: No, I think not. There is a difference there. You may answer.

3822 Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Answer the question. A. What is the question?
Q. You do not remember it? A. No, sir.

Mr. Haycraft: I ask that the question be read.
(Question read.)

By Mr. Haycraft.

Q. Do you remember that question? A. Yes, it simply forced us to return more merchandise to the manufacturers.

Q. It simply forced you to return more merchandise to the manufacturers? A. Right.

Mr. Haycraft: That is all.

Mr. Weisman: No cross-examination.

Examiner Bennett: What? No cross-examination?

Mr. Weisman: No, your Honor.

3824

Examiner Bennett: You may be excused.

(Witness excused.)

Mr. Haycraft: May I have five minutes to get a new witness?

Mr. Weisman: Get a better one than this one for you.

Mr. Haycraft: No, I do not need a better witness than this one. He was a very good one.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: We will take a recess for not more than five minutes in which to get another witness.

(There was a short recess taken.)

3825

SAMUEL J. CHANCE was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Haycraft.

Q. Have you given your full name to the reporter? A. I have to the Examiner, sir. Did you hear it, sir?

Mr. Weisman: We all want to hear it.

The Witness: Samuel J. Chance, also known as Samuel J. Cianciarulo, C-i-a-n-c-i-a-r-u-l-o.

By Mr. Honeycraft.

Q. How long have you been known as Samuel J. Chance? A. For about eight years.

Q. Am I to understand that you had your name changed? A. No, sir; not legally, simply a name that I was asked to change in the matter of making it easier for my associates in business. My correct name is a little difficult to pronounce.

3827 Q. First I will ask you where you live? A. In Philadelphia.

Q. What is your occupation? A. I am employed by Strawbridge & Clothier as a divisional merchandise manager.

Q. How long have you been employed by Strawbridge & Clothier? A. Three years, seven months.

Q. When you were first employed by Strawbridge & Clothier, what were your duties? A. At that time I was employed or hired to buy for their house-dress department.

Q. How long did you stay in that position? A. Approximately three years.

Q. How long have you been in your present position?

3828 A. Officially, since February 1, 1936.

Q. Do you have charge at the present time of Departments 331, 350, 338, 358, 371, 491, 492 and 493? A. Yes, sir.

Q. Yes.

Mr. Weisman: Wait just a minute. This sort of examining by code numbers is rather difficult for me to follow. Would you repeat those numbers, please? Would you repeat the numbers?

The Witness: The numbers that Mr. Haycraft mentioned to me?

Mr. Weisman: No, the numbers of the departments of which you are in charge.

The Witness: 331, 350, 338, 358, 371, 491, 373, 382.

Mr. Weisman: Wait a minute. Yes.

The Witness: 382, 385.

Mr. Weisman: Yes.

The Witness: 491, 492, 493.

Mr. Weisman: All right.

By Mr. Haycraft. 3830

Q. Can you testify as to the sources of supply of dresses at the time you became divisional manager of Department 331?

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

Examiner Bennett: Go ahead.

A. I cannot recall in my mind the sources of 331, the sources they used at that time.

By Mr. Haycraft.

Q. Have you prepared at the request of the Federal Trade Commission a statement giving that information? A. We have answered certain questions that were submitted to us by the Federal Trade Commission. 3831

Q. I ask you whether or not the paper I hand you will refresh your recollection on that point.

By Mr. Weisman.

Q. Did you personally prepare the answer that was sent to the Federal Trade Commission in reply to the questionnaire? A. No, sir.

Q. No. Thank you. That is sufficient. Now, did you see the answer that was sent to the Federal Trade Commission in the form that it was sent to the Federal Trade Commission immediately before it was so sent? A. Yes, sir.

Q. Where did you see it? A. In Mr.—in our attorney's office.

Q. When did you see it? A. I don't remember the date.

Q. How long ago would you say it was? A. I would say a couple of months.

Q. Would you say— A. Two or three months.

Q. Would you say it was last April? A. Possibly.

3833 Q. Do you know whether or not this is the original or a copy of any questionnaire that was sent? First, tell me whether you know it is an original or copy. A. It appears like an original, but the papers that were turned into the Federal Trade Commission had affidavits upon them.

Q. Do you know whether or not this is the original? A. I do not wish to testify if it is. I do not know.

Mr. Weisman: Now, I respectfully submit that the witness says he doesn't know what this is, and that he should not be shown this paper.

Examiner Bennett: Yes. Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

3834 Q. Now, I will ask you— A. Now, what is the question?

(Question read.)

A. Yes. This appears like a list——

Mr. Weisman: No, no. I submit that the witness be directed to answer the question, not what it appears to be like.

A. These are sources that we use.

Mr. Weisman: Just a moment. You were asked whether or not this paper refreshes your recollection, and I submit that the answer to that is "yes" or "no."

The Witness: Yes.

Mr. Haycraft: He has answered.

Examiner Bennett: Please don't get in front of counsel. Will you take your place over there?

Mr. Weisman: I will take my place over there.

Examiner Bennett: Now, go ahead with the examination.

Mr. Weisman: May I move that the answer be stricken out as not responsive to the question? 3836
The question was——

Examiner Bennett: It may be stricken. Get a direct answer.

Mr. Weisman: Thank you.

By Mr. Haycraft.

Q. Does this paper refresh your recollection as to the names of your sources of supply for your Department No. 331 on or about February, 1936? A. These are some of the resources. There were others also.

Q. Are those the principal resources?

Mr. Weisman: I object to that as being incompetent, immaterial, irrelevant, calling for a conclusion of the witness and not basis therefor. 3837

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. These, I believe, appear to be resources used by that department at the time that they were members of the Fashion Originators Guild of America. Some of these resources I recognize as being very important ones.

Mr. Weisman: I ask that the latter part of that answer be stricken out.

By Mr. Haycraft.

Q. Will you read into the record from the paper which you have the names of the resources that you have of Department No. 331 at the time that Strawbridge & Clothier were members of the Fashion Originators Guild?

Mr. Weisman: Just a moment. Now, I submit that that isn't even a question. That is a direction. I ask that it be stricken out and excluded: "Will you do this and this" into the record. That is a new form. I have never been met with that kind of question, and I submit that he should not be permitted so to do.

3839

Examiner Bennett: All right. You may answer.

A. Herman Beispel, H. Gans, J. Greenberg, Baron Dress, C. H. D. Robbins, A. Goodman, Perles & Gilbert, Harry Frank, Dresden, Friedman Dress, Joseph Greenberg & Bettina, Julius Grossman & Greenberg, Joseph Halpert, Larue Dresses, Frank Starr-Friedlander, Dolces Dresses, Ed Gerrick Company, Max Heit, E. A. Jackson-Bienard, Rudolph Gowns, Matthew Kadetsky, Gardner Schwartz, Bernard Appel, Boston; Goldstein & Entin, Boston; Baron Dress, Boston; Robinson Brothers, Boston.

By Mr. Haycraft.

Q. The others were located where? A. What?

3840

Q. You did not indicate. A. No.

Q. You said that certain were in Boston. You said "Boston" for the l st few. A. Yes.

Q. Where were the others located? A. May I see that, please?

Mr. Weisman: May it please, your Honor, that the witness has been permitted to read into the record a paper which is not in evidence, so that I may

have an equal access to it with my adversary I ask that I either be given a copy of this paper or that this paper be marked in evidence. This is a queer procedure with a paper which the witness says he cannot identify, and when that list is placed before him by the attorney to look at, and he reads that paper into the record, and still says it is a paper he cannot identify, I submit the least that can be done for me is that I can have a copy of it so that I may look at it, or that it be placed—that piece of paper be marked into evidence so that I may have access to it.

Examiner Bennett: I think that is fair. You 3842
can have a copy made, or it may go into the record as you desire.

By Mr. Haycraft.

Q. Can you testify as to the price lines that were manufactured by these respective manufacturers that you have named? A. I cannot testify to the price lines that each of these manufacturers makes, but I can testify to——

Mr. Weisman: I think that that is the answer. He says he cannot.

Mr. Haycraft: I object to the witness not being permitted to give all of his answer. I insist that he be allowed to answer.

Examiner Bennett: I will overrule the objec- 3843
tion. You may answer your answer.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

A. I can testify to the cost price of the total sum, or the cost price that that particular department bought the merchandise in, which would naturally be the purchase price of goods purchased from all of these manufacturers.

3844 *Samuel J. Chance—For Commission—Direct.*

Mr. Weisman: I move that the answer be stricken out as vague, incomprehensible, incompetent, immaterial and irrelevant. A man can sell merchandise at six different prices and he might buy at one price. That would not be representative of the manufacturer, and would not be responsive to the question asked him.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. Well, I think that is correct.

3845 *By Mr. Haycraft:*

Q. Will you give the price range of the garment manufacturers' products; in other words, the garments manufactured by this group of manufacturers?

Mr. Weisman: I object to that. He just stated he could not do that. He said he could not do that very thing. This witness could not possibly know at what purchase price these manufacturers sell their merchandise. He can only know the price at which he bought it. That is the vice of this question. That is why I objected to the last answer. It intimates that he knows the workings of other businesses that he could not possibly know.

3846 *By Mr. Haycraft.*

Q. I will amend the question to say price ranges of garments purchased from these various manufacturers.

Examiner Bennett: You may do that.

Mr. Weisman: Exception.

A. $10.75 and up.

By Mr. Haycraft.

Q. $10.75 and up? A. Yes.

Q. Can you testify as to the percentage of the orders placed by your No. 331 department that were placed with Guild manufacturers in February of —prior to February, 1936?

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant, and not within the issues of this case; highly prejudicial to the rights of the respondents herein.

Examiner Bennett: He can ask him whether he can testify. Overruled.

3848

Mr. Weisman: Exception.

A. I cannot testify to that department.

By Mr. Haycraft.

Q. What? A. I cannot testify to that department.

Q. I will ask you whether or not your memory can be refreshed from the paper which I hand you; the same paper which you had before?

Examiner Bennett: I will let him refresh his recollection from that paper.

Mr. Weisman: Exception.

A. 75 per cent. of the orders for Department No. 331 —331 department, as stated on this paper. 3849

Mr. Weisman: I move to strike out the answer as not responsive, as calling for a conclusion of the witness, and as based upon something in the document which is not in evidence; it is merely reading from a document without any knowledge on the part of the witness; hearsay, incompetent, illegal, immaterial; not proper direct examination, and having no probative value whatsoever.

Mr. Haycraft: I do not think the objection even requires an answer.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Are you familiar with the red carding of Strawbridge & Clothier by the Fashion Originators Guild of America, Inc.? A. Yes, sir.

Q. I show you Respondents' Exhibit 19 and ask you if you have ever seen it before? A. Yes, sir; I have.

Q. You have? A. Yes, sir.

3851 Q. When did you first see it? A. I beg your pardon?

Q. First, I will ask you where did you first see it? A. New York.

Q. New York City? A. New York City.

Q. Can you give us the date? A. I can give you the approximate date.

Q. Give us the approximate date. A. Early part of February, 1936.

Q. Early part of February, 1936? A. Yes, sir.

Q. In whose possession was it when you first saw it? A. It was in the possession of Baron Brothers of Boston, Mass.

Q. It was in the possession of Baron Brothers of Boston, Mass.? A. Yes, sir.

3852 Q. Do you know the individual who had the paper at the time that you saw it? A. Yes, sir.

Q. Who was he? A. Mr. Feldman, who was a representative of Baron Brothers.

Q. What was his first name? A. I do not know what Mr. Feldman's first name was.

Q. You saw, you say, Mr. Feldman, at the time? A. I did.

Q. Where was Mr. Feldman at the time you saw him with this document in his possession? A. You want to know the time that I saw Mr. Feldman when he had this paper with him?

Q. Yes. A. It was in the showroom.

Q. What was that? A. It was in the New York showroom that I saw Mr. Feldman when he had this paper in his possession.

Q. Did he give it to you at that time? A. I asked him for it and he did.

Q. Did he say anything to you at the time that he gave it to you? A. At the time he gave it to me; yes, sir; he did. He stated that we were red carded and he could not 3854
ship us any merchandise. I asked him what the reason for it was and he produced the card. I asked him whether I could have it, and he said, "Yes."

Q. This is the card that he referred to? A. Yes, sir; this is the card that he gave me at that time.

Q. Would he show you any merchandise at that time? A. No, sir.

Q. No? A. No, sir.

Q. Has he done so since? A. I believe he resigned from the Fashion Originators Guild since then and we have transacted business with him.

Q. How long ago? A. I do not know.

Q. You do not know? A. No.

Q. More than a month? A. I would not hazard a guess. 3855
It would only be a guess if I stated it.

Q. Well, what did you do after you were given this card by Mr. Feldman?

Mr. Weisman: I object.

By Mr. Haycraft.

Q. Strike that out. Did you attempt to get any dresses from any other of your sources of supply for your Department No. 331? A. Yes, sir.

Q. Do you know what manufacturers you attempted to get it from? A. C. H. D. Robbins was one particular manufacturer that I recall. And also I wrote to several others which I do not remember. Those were manufacturers that we took affidavits from; certain other ones.

Q. Do these papers refresh your recollection on that?

(Witness handed certain papers.)

A. No, sir; those are not the affidavits.

Q. I show you this same paper that I showed you a moment ago and ask you does that refresh your recollection? A. No, sir; it does not.

3857 Q. I call your attention to No. 9 at the bottom of the page. A. No, sir.

Mr. Weisman: He still says "No, sir."

By Mr. Haycraft.

Q. Who made the affidavits which you have in mind which would refresh your recollection? A. What?

Q. Who made the affidavits which you have in mind that would refresh your recollection?

Mr. Weisman: I object to that. He did not have any recollection. How can he refresh his recollection if he does not have any?

Mr. Haycraft: He said it was an affidavit. He tried to get affidavits, if I understood his question.

3858 Mr. Weisman: I do not remember him saying anything about having an affidavit. That is not what I recall him saying.

The Witness: I said we took affidavits.

By Mr. Haycraft.

Q. Is this the affidavit which you referred to? A. What?

Q. Is this the affidavit which you referred to? A. This one was taken in conjunction with Miss Flynn. It is not this one.

Q. Does this paper refresh your recollection (indicating)? A. No, sir. This is the affidavit of Miss Flynn.

Q. That does not? A. No, sir.

Q. Ah, ah. I see.

Mr. Weisman: Will you put that negative shake of my friend's head into the record showing his disappointment that the witness refuses to say that this refreshes his recollection?

By Mr. Haycraft. 3860

Q. Are those the papers that will refresh your recollection—the affidavits which you had in mind? A. These two are. These others are not.

Q. Which two are? A. These that you have in that hand. Not the ones that you have in the other hand.

Q. Now, refresh your recollection from the papers that you have in your hands, and having refreshed your recollection from the papers which I have just shown you, will you testify as to your attempts to get dresses, or other goods, from other Guild manufacturers or resources of your Department No. 331? A. Yes, sir. We have attempted to get dresses from C. H. D. Robbins as this affidavit——

Mr. Weisman: No, no. 3861

By Mr. Haycraft.

Q. I do not want to know anything about the affidavit.

Mr. Weisman: Never mind about the affidavit, Brother Chance.

Mr. Haycraft: Let me conduct my own examination.

A. (Continuing) We have also attempted to buy dresses from Robinson Brothers of 498 Seventh Avenue. I say "We." I accompanied a friend on a buying trip. This friend was buyer of 331 department.

By Mr. Haycraft.

Q. And with what success did you meet in your attempts to buy from Robinson Brothers? A. We were informed we were red carded, and they refused to show us, or sell us any merchandise.

Q. Now, did you make any further attempts to secure merchandise from manufacturers who were your sources
3863 of supply of Department 331? A. I personally did not.

Q. Did anyone in your department under your supervision do so? A. Yes. The buyers have attempted at various times.

Q. With what success? A. They were informed in the same manner it was red carded, and could not be shown, could not be sold, could not buy any merchandise.

Q. And for what reason? A. Because of the red card.

Mr. Weisman: May we know who said this so we can controvert it if it isn't the fact? I think it is entirely unfair to be met with this omnibus type of testimony.

Examiner Bennett: I will ask you to be specific.

Mr. Weisman: What?

3864 Examiner Bennett: I will ask him to be specific.

By Mr. Haycraft.

Q. I will ask you whether or not you made an attempt to buy through your buyers?

Mr. Weisman: No. Just a moment. Will your Honor ask him to be specific without Mr. Haycraft testifying?

Examiner Bennett: Yes. I think you should ask who they were.

Mr. Weisman: And may I have the last question and answer stricken out, with regard to those he will specifically identify as being those by whom this was said, because there will be a day when we will have our side in this case.

Examiner Bennett: All right. It may be stricken.

The Witness: Miss Flynn, Miss MacAlaney.

Mr. Weisman: No. No. You didn't understand.

The Witness: I am sorry. Can I hear the question again?

Mr. Weisman: The Court has asked you to be 3866
good enough to give us the names of those people who said that they wouldn't sell you or show you merchandise.

The Witness: I have given the names of people who I personally contacted.

Mr. Weisman: Well, now, do you know of any others specifically?

The Witness: Not by personal contact of my own.

Mr. Weisman: Well, do you know any others whom you can name even without personal contact?

The Witness: You mean through the experience of other buyers?

By Mr. Weisman.

3867

Q. Yes, provided you can give us the names of those people so that we may be in a position to controvert it if we don't think it is correct. A. Well, all members of the Guild to our buyers' approach.

Q. Well, we want to know who were the specific members of the Guild that your buyers approached? A. That is all in their affidavits. They had personally taken affidavits.

Q. Well, do you know it? A. I do not.

Mr. Weisman: May we have it from the people who know. Judge, instead of from this witness who is, I submit—he says he doesn't know, but somebody made an affidavit and that is the source of his knowledge.

Mr. Haycraft: I move, Mr. Examiner, that all of these questions improperly applied at this time by counsel for the respondent be stricken and I be allowed to continue the direct examination.

Mr. Weisman: I think it is perfectly apparent that I was acting as friend of the Court. The Court
3869 directed that they be particularized.

Now, I move that all of the testimony——

Mr. Haycraft: He didn't direct counsel for the respondent to do the particularizing. That is the point.

Mr. Weisman: Now I ask that with the exception of the testimony as applied to C. H. D. Robbins and Robinson Brothers, all statements about refusal to sell or show merchandise be stricken from the record, your Honor.

Mr. Haycraft: I have a motion pending, Mr. Examiner, to strike all of this examination, cross-examination, at this time from the record.

Examiner Bennett: Yes. I will now strike the
3870 cross-examination. Go ahead.

Mr. Weisman: Now, may I have a ruling on my motion, your Honor?

Examiner Bennett: Beg your pardon?

Mr. Weisman: I say, may I have a ruling on my ruling?

Examiner Bennett: Yes: I will deny the motion.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Now, Mr. Chance, did you give any instructions to your buyers with respect to attempting to get goods from your regular source of supply, members of the Guild after they were red carded? A. Yes, sir. The early part of February I instructed our buyers to visit as many Guild showrooms as they possible could within a day and attempt to buy merchandise.

Q. Did you get a report back from your instructions? A. I have, sir. The report was that they could not be shown or could purchase any merchandise from Guild resources.

Mr. Weisman: All right. Thank you. 3872

(Whereupon, at 4.50 o'clock P. M., August 3, 1936, the hearing in the above-entitled matter was adjourned.)

Court Room No. 313,
U. S. Post Office Building.
Philadelphia, Pa.,
August 4, 1936.

Met, pursuant to adjournment, 9 A. M.

Before: JOHN W. BENNETT, Examiner.

3873

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

MILTON C. WEISMAN, Esq., GEORGE FELDMAN, Esq., HERBERT S. KELLER, Esq. and M. A. ALBERT, Esq., appearing for the Fashion Originators Guild or America, Inc.

ALLEN S. OLMSTED 2ND, Esq., of SAUL, EWING, REMICK & SAUL, 2301 Packard Building, Philadelphia, Pa., appearing for John Wanamaker of Philadelphia.

I. I. JAMISON, of SUNDHEIM, FOLZ & SUNDHEIM, 1632 Bankers Securities Building, Philadelphia, Pa., appearing for Lit Brothers, Philadelphia.

PROCEEDINGS.

Examiner Bennett: Gentlemen, we will be in order, please.

3875 Mr. Haycraft, you may resume.

Mr. Haycraft: I will recall Mr. Chance to the stand to testify further on direct examination.

SAMUEL J. CHANCE resumed the stand and testified further as follows:

Direct examination (resumed) by Mr. Haycraft.

Q. I will ask the witness to testify as to what departments of this business, or what division of the dress department, whichever way that should be worded, were mostly affected by—strike that out. I will ask the wit-
3876 ness to testify as to what departments of dresses handled Guild merchandise? A. Departments 331, 338, 350 and 358.

Mr. Weisman: Wait a minute. 331.

The Witness: 350.

Mr. Weisman: Yes.

The Witness: 338.

Mr. Weisman: Yes.

The Witness: 358, 371, 373, 382.

By Mr. Haycraft.

Q. Now, you have already testified as to the percentage of Guild merchandise handled in 331, have you not?. A. I testified as to the percentage of outstanding orders from Guild manufacturers at that particular time.

Q. Well, from your experience can you testify as to the departments, can you testify as to the percentage of merchandise of the Guild manufacturers that were handled by each of these departments that you named, if you can? I am asking you if you can; that is, at the time the red carding took place? A. No, I cannot for each—for all of the departments, Mr. Haycraft.

Q. Can you testify as to which of those departments 3878
handled principally Guild merchandise? A. I have named all of the departments that have been purchasing from Guild houses.

Q. Can you testify as to which of those departments handled principally Guild merchandise?

Mr. Weisman: I object.

By Mr. Haycraft.

Q. As distinguished from other manufacturers at the time the red carding took place?

Mr. Weisman: Obviously such testimony is incompetent. "Principally." I mean, he has testified that they all handled them. We have no opportunity to cross-examine on what is the meaning of 3879
the word "principally." We have no opportunity to cross-examine what is in his mind. What is in his mind as "principal" might be different than in my mind. I think it is a very unreasonable question.

Examiner Bennett: Overruled. You may answer.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. You may answer. A. 350 department. In my estimation that is the department that would handle more Fashion merchandise, or merchandise that would be purchased from Fashion Originators Guild of American manufacturers, members of that group.

Mr. Weisman: Just a minute. I ask that the answer be stricken out as giving an opinion of this witness. The question was, does he know on or about February, 1936, which one did.

Examiner Bennett: You are giving your best information?

3881 The Witness: I am sorry. I didn't hear you.

Examiner Bennett: You are giving your best information?

The Witness: Yes, sir.

Examiner Bennett: All right. Overruled.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. What would be the second? A. The second would be in the total—in the large number of dollars, would be 358 department.

Q. 358? A. Yes, sir.

Q. And the next? A. 331.

Q. Well, now, referring back to 331 for the time being

3882 can you testify as to whether or not there were orders outstanding with Guild manufacturers at the time of the red carding, February, 1936, in that department? A. Are you referring to 331 department?

Q. 331. A. Yes, sir; I can.

Q. Can you testify as to what manufacturers the date of the orders were placed, the date when the orders were due, and the amount of the orders? A. Such a list was gotten up at the time.

Mr. Haycraft: Mark this for identification.

(The list referred to was marked for identification Commission's Exhibit 400.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 400 for Identification. Is that the statement you have in mind? A. Yes, sir.

Q. Was that prepared under your supervision? A. That was prepared by Miss Flynn and turned in to me.

Q. Are you satisfied it is correct? A. I am.

Mr. Weisman: Objected to as incompetent, immaterial and irrelevant whether he is satisfied it is correct. 3884

Mr. Haycraft: I offer this in evidence.

Mr. Weisman: I object, no proper foundation laid.

Examiner Bennett: I will receive it.

Mr. Weisman: Exception.

(The list referred to, heretofore marked for identification Commission's Exhibit 400, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. Were these orders ever filled? A. No, sir.

Mr. Weisman: May it also appear in the record that Mr. Freeman is assisting counsel for the Commission. I want that to appear in the record and I will make it the subject of a motion at the proper time. He is prompting him with questions and advice, telling him with regard to what should be done and said. 3885

Mr. Haycraft: I don't think that it is necessary to be in the record.

Mr. Weisman: I insist upon it.

Mr. Haycraft: Well, now, Mr. Examiner, does counsel have the right to insist upon such things going into the record?

Examiner Bennett: Well——

Mr. Haycraft: Are you ruling this hearing or is counsel for the respondents?

Mr. Weisman: I am not ruling the hearing.

Examiner Bennett: It is not necessary to put it in in that sort of form.

Mr. Haycraft: I ask that it be completely stricken from the record.

3887 Examiner Bennett: I think you jolly well know our rule here. I will, of course, decide as to these things. I see no harm in placing it in the record and I am going to let it stay in the record.

Mr. Weisman: Thank you.

Examiner Bennett: Not particularly because of the wish of the attorney for the respondent.

Mr. Weisman: Yes, sir.

Examiner Bennett: I take it this attorney is furnishing information to the other attorney. I see no particular crime in that.

Mr. Weisman: I see no particular crime; I—it was not my intent to impute to the Commission any crime. However, it may be that I may be mistaken—I believed the Government was investigating

3888 this situation. I say that when counsel for a particular firm such as this, which has had differences of opinion with us, and which we will prove, before this case is over, has been particularly vicious in its attempt upon us, that when and where counsel for such firm takes part so actively with counsel for the Commission that these proceedings lose their inquisitorial nature and become in effect and in fact a persecution, in which they seek to band themselves

together with the power of the Government for a purpose which is highly improper, and which I cannot condemn too strongly.

Examiner Bennett: You have your statement in the record.

Mr. Weisman: Thank you.

By Mr. Haycraft.

Q. In view of the statement of counsel I will ask you this question: Are you sufficiently familiar with the type of garments handled by Department No. 331, testified to by you, so as to testify as to the characteristics of those garments? A. I do not understand. 3890

Q. In distinguishing them from the other departments? A. Yes.

Q. Yes. A. Yes.

Q. Will you testify as to the type of garments that are handled by Department 331? A. Department No. 331 confines its business to women's sizes, or dresses that are made in sizes from No. 38 to No. 52 and half sizes which will be comparable to those sizes.

Q. Now, as to the styling or tailoring of the dresses sold in that department, are you in position to testify as to that?

Mr. Weisman: I object to that as incompetent, immaterial, and irrelevant for any purpose whatsoever. It is obviously without any bearing upon this 3891
case, if your Honor please.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. The styling of the merchandise that is handled in Department 331 is that which represents the highest style for women, in comparison with some of the other departments, and also dresses that are made in detail, in finish, in fabric, and everything else taken into consideration to make a finer type of garment.

By Mr. Haycraft.

Q. Now, then, I will ask you if you know what effect the red carding had upon your department?

Mr. Weisman: I object as incompetent, immaterial, and irrelevant, and I would like to draw the Court's attention to the statement that I made while we were in this case at the opening; it is obviously an unfair effort on the part of counsel for the Commission to go into and get into the testimony something which your Honor ruled out, and, furthermore, it is not a fair thing to put in evi-
3893 dence, in view of the fact that the witness has before him, and which I now see with my own eyes physically, and which is clearly visible, a statement showing the effect claimed by these people in regard to all of their business in the departments affected by Guild merchandising policies.

I submit to pick out one in this way is obviously unfair, totally unfair and unreasonable, and is directly and clearly and within knowledge of counsel and witness and everyone here present drawing an improper, untrue and incorrect picture of the situation to the substantive detriment of the vital interests of respondent in this case.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

3894 Mr. Haycraft: Shall I proceed?

Examiner Bennett: Yes.

By Mr. Haycraft.

Q. Go ahead. A. In analyzing our price lines, we have definitely noticed that there are certain price lines that we could not buy.

Mr. Weisman: I ask that the witness be directed to answer the question and not give us a long

speech about it. The question was entirely specific and now he is giving us a long story about it.

Mr. Haycraft: I move that counsel be instructed not to interrupt the witness until he has completed the answer.

Mr. Weisman: I wonder when we get to our case if you are going to be so kind, Mr. Haycraft, as to permit the witness to give a long answer.

Mr. Haycraft: Certainly. I do not ask anything I do not expect to give. Such a suggestion I think is entirely unwarranted.

Mr. Weisman: We will see. We will see.

May we have the question read so that your 3896
Honor will see how improper it is? This question calls for the witness' knowledge as to the matter and not what the matter is. He is asked if he knows what the effect of red carding was upon his department; he can answer that he does know or does not know.

Examiner Bennett: No, no. I wish you would not interrupt until the witness finishes his answer, then you can move to strike if the answer is not responsive. I wish to say to the witness that he will answer as to the effect of that department.

Mr. Weisman: I do not think that is the question, your Honor. I should like to have the question read.

Examiner Bennett: No. 3897

By Examiner Bennett.

Q. Start out and give the effect of the department, if you can give the facts, and do not go into your opinions about it at the present moment, at least. A. The effect of the red carding was a loss of sales.

By Mr. Haycraft.

Q. Will you explain? A. I——

Mr. Weisman: I object to the explanation on the ground it is obviously not a matter for testimony with regard to a fact. If the witness knows the fact, he knows it, and he has stated what apparently, in his opinion, is the fact. I submit that that is one thing, but to put this witness in a position where he testifies as to a fact upon which one, with the knowledge that we all have, can now know, is only the subject-matter of opinion, I respectfully
3899 submit, is incompetent, immaterial and irrelevant, and highly prejudicial to the substantive rights of the respondents.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

By Examiner Bennett.

Q. You may answer. Make it factual rather than opinionated. A. In analyzing our price lines, we noticed that in certain price lines we could not buy into it, and that they were manufactured by Guild houses, and that those lines showed a decrease in sales in the respective months of 1936 as compared with the same months in 1935.

Q. The facts upon which you base your statement you
3900 have stated? A. That is the fact that such papers were checked into and a report drawn up covering the entire situation for the store.

By Mr. Haycraft.

Q. Did you issue any instructions to your buyers with respect to those price lines that you had been buying from Guild houses that you were unable to get as the result of the red carding? A. Yes, sir.

Q. What were your instructions? A. My instructions were to attempt to build other manufacturers so we could replace Guild resources and go along with other resources in place thereof and not be shut out of business thereby.

Q. What did those buyers do with regard to that respect, pursuant to your instructions?

Mr. Weisman: I object to that as incompetent, immaterial, irrelevant, a matter of hearsay, calling for the operation of another person's mind, and for the operation of this person's mind as to the operation of another person's mind, thereby building vice upon iniquity. He can testify as to what he told his buyers, and they should testify as to what they 3902
did. I submit that this is going a little bit too far, your Honor, even for Mr. Haycraft.

Mr. Haycraft: The witness has knowledge of certain facts.

Mr. Weisman: I am addressing myself to the Court. I think that this is a legal argument, and that your statement does not add anything to the validity of the question or detract from the force of my objection, if there is any force in it.

By Examiner Bennett.

Q. Did the buyers report to you on their activities in the due course of business? A. Yes, sir.

Q. Can you testify as to what they reported to you in 3903
that respect? A. Yes, sir.

Examiner Bennett: Proceed.

By Mr. Haycraft.

Q. The Examiner has instructed you to testify as to what your buyers reported to you.

The Witness: What is the previous question?

(Question read.)

A. The buyers reported to me that they spent a lot of time in the market attempting to locate proper manufacturers that could make garments comparable to those originally purchased from Guild members, and it was a very difficult job.

By Examiner Bennett.

Q. Did they succeed? A. No, sir.

Q. And they so reported to you? A. Yes, sir.

By Mr. Haycraft.

3905 Q. As I understood you to say, or as I understood you to testify, the buyer for that particular department was Miss Martha Flynn? A. Yes, sir.

Q. She will be here and will be able to testify as to what she herself actually did?

Mr. Weisman: She is in better position to state what she can testify to than this witness is. Counsel is now seeking to bolster up a witness who is not even here, and I submit it is highly improper. I object to it.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. Yes, she will.

3906 *By Mr. Haycraft.*

Q. Returning to Department No. 350? A. Yes.

Q. Who is the buyer for Department No. 350? A. Miss McAllenny.

Q. How long has she been buyer for that department? A. She?

Q. Yes. A. Since some time in January, 1936.

Q. What is the name of that department? A. What?

Q. What garments are sold in that department? A. Misses' better dresses.

Q. Are you in a position to testify as to the resources of that department in January, 1936, just before the red carding took place? A. No, sir; I cannot do that.

Q. By that, you mean you have no knowledge or do not recall? A. I cannot recall.

Q. I will ask you whether or not this paper will refresh your recollection, either one of these papers? A. The names of those resources I recognize as resources used by that department.

Q. Now, having your memory refreshed, will you testify for the record the names of the manufacturers that you 3908
recognize as resources for the Department 350? A. Milton Altmark, Capri Frocks, Frank Star-Friedlander, Goldston & Entin, A. Goodman, Max Heit, Lipman, Parnas Levenson, Schulte Zuck.

Q. Can you testify as to the price range of the garments purchased from those manufacturers, the wholesale price? A. $10.75 and up.

Q. Can you testify as to the percentage of the garments sold in that department that were purchased fr.. m Guild manufacturers, Guild houses? A. No, sir; I cannot.

Mr. Freeman: I haven't discussed the matter with any witnesses who are to be called.

Examiner Bennett: I assume you haven't.

Mr. Weisman: And I assume you will not? 3909

Mr. Freeman: I make no remarks to you, sir.

Mr. Weisman: Well, then, I urge my motion that Mr. Freeman——

Examiner Bennett: It is denied.

Mr. Weisman: —be excluded, especially in view of Mr. Freeman's unwillingness to state for the purpose of the record that he will not discuss the testimony of this witness or the witnesses who went

before him with such witnesses as he may have access to.

Examiner Bennett: He is a member of the Bar and in good standing, and as such does not require any such pledge.

Mr. Weisman: I respectfully except.

Mr. Feldman: Your Honor, isn't there a method prescribed by the Commission for attorneys to intervene? Isn't there a form, a regular form that the Commission has for attorneys who wish to intervene with the Government in behalf of intervenors?

3911 Examiner Bennett: I do not think I want to go into a discussion of that right now.

Go ahead with the procedure here, with the examination.

By Mr. Haycraft.

Q. Mr. Chance, do you know whether or not at the time of the red carding there were any orders outstanding with Guild manufacturers for Department 350? A. Yes, sir; there were.

Q. Can you testify as to the names of those manufacturers and the amounts outstanding? A. A list was made up at the time. I do not recall in my mind who those manufacturers were, or what amounts were outstanding.

3912 Q. I will ask you whether or not this paper refreshes your recollection on that?

Examiner Bennett: I will ask you the same question as I did about the other list. Did you direct the preparation of that list, or have any part in the making of it?

The Witness: This list was made up in my office, Judge, in presence of the buyer.

Examiner Bennett: At your direction?

The Witness: Yes, sir.

Examiner Bennett: Do you know it to be correct? Did you know at the time that it was correct?

The Witness: I do, sir.

Examiner Bennett: All right.

By Mr. Haycraft.

Q. Having refreshed your recollection, will you testify as to what the paper is? A. This is the list that was prepared for me in my office.

Q. Will you give the name and the amount? A. A. Goodman, $538.75; Max Heit, $173.50; Capri Frocks, 3914
$193.

Mr. Weisman: May I see that?

(The paper referred to was handed to Mr. Weisman.)

By Mr. Haycraft.

Q. Were those goods ever received? A. No, sir.

Q. I notice that you gave the name of Lipman as one of the resources of supply of the Department 350 in January, 1936.

Mr. Weisman: Wait a minute. When was that?

Mr. Haycraft: He gave that testimony a while 3915
ago.

Mr. Weisman: Did he testify as to Lipman?

Mr. Haycraft: Altmark, Capri, and so on.

By Mr. Haycraft.

Q. Do you recall giving Lipman— A. I do, sir.

Q. Do you have an independent recollection of the type of garments sold by Lipman Brothers to that Department

350? A. I know one outstanding type of garment that we used from Lipman in Department 350 which consisted of a garment which was known on the market as a four-way suit.

Q. Had you been buying that garment from Lipman Brothers in January, 1936? A. There were such records; yes, sir.

Q. Were you able to buy it after the red carding? A. We were not.

Q. Are you in a position to testify as to the volume of business done with Lipman Brothers on that garment during January, 1936? A. Such a record was made.

3917 Mr. Weisman: Wait a minute, please. I object to that as incompetent, immaterial and irrelevant, picking out a manufacturer and saying, "Can you testify as to the volume of business done with that manufacturer?" It is obviously without weight in a suit such as this.

Examiner Bennett: Well, I think that is much more enlightening than attaches to a general statement.

Mr. Haycraft: I might explain, Mr. Examiner, perhaps for counsel for the respondents' benefit as well as our own, that as probably can be observed, it is my intention to give a general statement, and then follow it up by detailed statements in the

3918 various departments that have been affected by the Guild activities, and that is the purpose of this line of examination.

Examiner Bennett: Well, I am going to overrule the objection.

Mr. Weisman: Exception.

Examiner Bennett: If he has any real knowledge of that situation.

The Witness: May I have the question, please?

(Question and answer read.)

By Mr. Haycraft.

Q. I will show you a paper and ask you if that is the record you have in mind? A. Yes, sir.

Q. Was that made under your supervision? A. This was made in my presence, copied from the original orders.

Q. Under your supervision? A. Yes, sir.

Mr. Haycraft: I offer it in evidence.

(The list referred to was marked for identification Commission's Exhibit 401.)

By Mr. Haycraft.

Q. This exhibit which you just identified—strike that out. The prices indicated on this exhibit, which you have just identified, are those wholesale or retail prices? A. That gives the prices. 3920

Q. The prices you paid the manufacturer? A. Yes, sir.

Q. Cost prices? A. Cost prices.

By Mr. Weisman.

Q. You mean prices you would have paid the manufacturer? A. The prices we did pay.

Mr. Weisman: Did not he testify that he could not get them?

Examiner Bennett: In January.

By Examiner Bennett. 3921

Q. Was January an unusual month? A. I am sorry, sir.

Q. Was January an unusual month as to volume of business in that particular piece of goods? A. I would not say so, sir. On subsequent months following we would be expected to do greater than in January on that particular type garment.

Q. Your testimony is that it was not an unusually large month? A. It was not.

Q. It was not? A. No, sir.

By Mr. Haycraft.

Q. What is the custom as to the placing of re-orders? A. The custom of placing re-orders is judged by the activities, or selling activities of any particular style in stock.

Q. Do you know whether or not this was a re-order or an initial order, this January order? A. You have there an initial order and a subsequent re-order on that report.

3923 Q. And the initial order being January 14 for sixteen dresses? A. What is that?

Q. The initial order being under date of January 14 and for sixteen dresses? A. May I see it, please?

Q. Yes. A. This order was placed on 1-14-36, and is the original order for sixteen pieces of style No. 2900 and subsequent re-orders are the same style made out of different and in additional fabrics.

Q. Did you testify as to whether or not from that exhibit that was a popular number, or can you? A. I can.

Q. Will you testify as to whether or not, from that exhibit, that was a popular number? A. Yes, sir.

Mr. Weisman: I object to that as incompetent, irrelevant, and move to strike out the answer.

3924 Popular number assumes it was something—assuming it was or was not, what difference does it make?

Examiner Bennett: Overruled; you may answer.

Mr. Weisman: Exception.

A. Yes, sir. It was a very popular number. That was decided by the ready acceptance of that particular style in that price which is considered to be a fairly high-priced garment for that type, and in the manner in which it

sold and the subsequent re-orders that were placed in a very short time.

Mr. Weisman: I ask that all of the answer be stricken out except "Yes, sir."

Mr. Haycraft: The Examiner's question asked for it.

Examiner Bennett: I think it was worded in a little different manner. I will confine it to the first sentence. It may be stricken out except for the first sentence, the words, "Yes, sir. It was a very popular number."

By Mr. Haycraft. 3926

Q. How did you determine it was a very popular number?

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant.

Examiner Bennett: I will let him answer.

Mr. Weisman: Exception.

A. That is determined by the "fast selling book" which each department keeps for its record to determine selling reported by a sub-system for the selling of each style in stock.

By Mr. Haycraft.

3927

Q. What basis do you have for selling— A. I beg your pardon?

Q. What basis do you have for saying that it was a fast selling garment? A. I——

Mr. Weisman: I object as already answered, incompetent, immaterial and irrelevant, the question was asked before and now he is asking the question again, and he is proceeding crabwise to subse-

quently explain the answer, and the answer is in already, and I object to this form of testimony and ask that the question be physically stricken from the record.

Examiner Bennett: Read the question.

(Question read.)

Mr. Weisman: This is a cross-examination of his own witness. You will recall that the statement was made by the witness—that the statement was stricken.

Mr. Haycraft: Certainly. You will recall that, if your Honor please, that the statement made by
3929 the witness was stricken, and I am trying to get it in in the proper way now.

Examiner Bennett: He has already answered that question. I will sustain the objection.

Mr. Haycraft: Pardon?

Examiner Bennett: I say, I will sustain the objection.

By Mr. Haycraft.

Q. Have you made your full explanation, Mr. Chance, of the reasons why you say this is a fast selling number?

Mr. Weisman: I object to it.

Examiner Bennett: I will sustain the objection. I think we are through with that.

3930 Mr. Haycraft: I respectfully request that the answer of the witness which was struck out be reinstated so that the record will show the information which I am trying to elicit.

Examiner Bennett: You have it physically in the record if you want to argue that it is proper evidence, why, all right.

By Mr. Haycraft.

Q. I will ask you first what you did to obtain new dresses—new sources of supply for garments sold in Department 350? A. I instructed Miss McAllenny to attempt to get new resources other than Guild members to study the market and to be more careful and to review the shopping sources that we had not used before in attempting to locate the type of merchandise that we had to have for that department.

Q. What did she report to you? A. She reported to me it was a very difficult job, and that it would require a lot of time, and—resources are not built up overnight.

3932

(Question read as follows: "Q. I will first ask you what she told you about that matter?")

A. Miss McAllenny reported that it was a difficult matter—that it was a difficult matter to replace Guild resources.

By Examiner Bennett.

Q. You have testified to that before? A. Yes, sir.

Mr. Weisman: That is my understanding.

By Mr. Haycraft.

Q. Did she make any report to you as to her ability to obtain a source of supply to replace the source of supply 3933
which she had been using in buying from Lipman Brothers?

Mr. Weisman: Same objection.
Examiner Bennett: Overruled.
Mr. Weisman: Exception.

A. Miss McAllenny purchased one number from another manufacturer which did not replace the garment which we had purchased from Lipman Brothers.

By Examiner Bennett.

Q. Was that part of the substitution? A. We had hoped that it would replace the garment purchased from Lipman Brothers but it did not.

By Mr. Haycraft.

Q. I will ask you whether or not you can testify as to the effect upon the volume of your sales in Department No. 350 as the result of the red carding? A. Yes, sir. Those records are available?

Q. Have you made any computation or compilation of such effect? A. Yes, sir; I have made a study as to the
3935 percentage increase for that department and an extensive study of the effect on price lines for that particular department.

Mr. Haycraft: I should like to have that answer read back.

(Answer read.)

The Witness: I said "decrease" and not "increase."

Mr. Haycraft: Yes, I understood it to be "decrease."

Mr. Weisman: I am sitting here more closely to the witness than you are, and the court reporter is sitting right next to him, and neither of us heard it that way.

3936 Mr. Haycraft: What did you hear?

Mr. Weisman: I did not hear anything, but I do say that I did not say I heard anything. I say this much that I did not hear anything and you obviously did not hear anything if I did not hear anything, because you are much further away than I am.

The Reporter: I am only trying to get the matter straight, that is my only interest.

The Witness: If I said "increase," Judge——

Mr. Weisman: It is perfectly obvious that the witness is trying to fix up his answer now and that the reporter had it correctly in the first place. I simply call it to your Honor's attention and ultimately will call it to the attention of the Commission as to the character of testimony that is being presented here.

Examiner Bennett: The witness has clarified his answer. Proceed.

By Mr. Haycraft.

Q. You testified as to the percentage that you have in mind? A. In a general way. 3938

Q. Can you testify as to the percentages that you have in mind in detail? A. I have made a copy of that particular operation.

Q. For this department? A. Yes, sir. This will show a comparative increase—or—decrease, I mean.

The Reporter: Did you say "increase" or "decrease"?

The Witness: I first said "increase" and then I changed it to "decrease."

Mr. Weisman: Now, let us get this straight because this witness seems to be switching around a little bit.

3939

By Mr. Weisman.

Q. Did you say "increase" that time? A. I said increase, I seem to have it in mind, but I meant decrease.

Q. And that is what you said before, too.

Mr. Weisman: What did you hear him say this time, Mr. Haycraft?

Mr. Haycraft: "Increase."

Mr. Weisman: I just wanted to make sure that you did not hear "decrease" this time.

By Mr. Haycraft.

Q. You can continue your answer. I will put it this way, then: The paper which you hold in your hand, was it prepared by you or under your supervision?

Mr. Weisman: Wait a minute. There are two questions there. Ask him one and then the other.

Mr. Haycraft: I think that is a proper question, Mr. Examiner.

Examiner Bennett: Well, you can——

3941

Mr. Haycraft: Either one is admissible, if he prepared it, or under his supervision.

Mr. Weisman: I want to know for the purpose of cross-examination.

Examiner Bennett: Well, let him say whether he prepared it himself or——

The Witness: This paper was prepared under my supervision, Judge.

By Mr. Haycraft.

Q. You are satisfied it is correct? A. Yes, sir.

Q. Prepared from the records of the Strawbridge & Clothier Company? A. Prepared from figures that are obtainable from Strawbridge & Clothier or from our

3942 records.

Examiner Bennett: Do you know them to be correct?

The Witness: Yes, sir. They were submitted to us by our auditing department.

Examiner Bennett: You are offering that as an exhibit?

Mr. Haycraft: Yes.

(The paper headed "Comparative Increase or Decrease for Dept. 350. Feb. 1 to June End 1936 as against 1935 for the same period" was marked Commission's Exhibit No. 402 and received in evidence.)

Mr. Haycraft: Mr. Reporter, will you get his previous answer?

(The previous answer referred to was read by the reporter.)

By Mr. Haycraft.

Q. Now, the exhibit which you just identified, Commission's Exhibit 402, is an exhibit indicating the effect upon the sales, and a decrease indicated in that exhibit is the decrease you had in mind in your reply a moment ago? A. Yes, sir. 3944

Q. Now, then, will you now direct your attention to your study of the effect upon the price lines in the departments? What is the result of your investigation in that respect? A. Well, I cannot recall to my mind what the effect was but such a list is available and has been made up.

Mr. Weisman: I ask that the answer be stricken out as not responsive except that he doesn't know.

Mr. Haycraft: Read the answer.

(The answer was read by the reporter.)

Examiner Bennett: Beginning with "what" may be stricken. We will have a recess of ten minutes. 3945

(There was a short recess taken.)

Examiner Bennett: Be in order, please.

Mr. Haycraft: Mark this the next exhibit.

(The paper headed "Retail Price Line Comparison, Dept. 350" was marked Commission's Exhibit No. 403 for Identification.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 403 for Identification, and ask you what that is.

Mr. Weisman: Wait a minute before you ask him.

By Mr. Haycraft.

Q. I ask you if you can identify that? A. Yes, I can.

Q. What is it? A. It is a retail price line comparison for Department 350 for the months of February, March, April, May and June in 1935 and 1936, comparison of sales

3947 results.

Q. Who prepared it? A. This was prepared at my direction.

Mr. Weisman: I ask that the answer be stricken out.

Q. Did you check it? A. Yes, sir.

Q. Are you satisfied it is correct?

Mr. Weisman: Objected to as incompetent and immaterial as to his satisfaction.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. I am satisfied this is correct.

3948 Mr. Haycraft: I offer it in evidence.

Examiner Bennett: Have you offered the other one?

Mr. Haycraft: I think you let it in.

The Reporter: It was offered but no formal ruling was made on it.

Examiner Bennett: Yes. Well, it is received.

(Referring to Commission's Exhibit No. 402.)

Mr. Weisman: (Referring to Commission's Exhibit No. 403.) Objected to as immaterial and irrelevant.

Examiner Bennett: Overruled. It may be received.

(The paper heretofore marked Commission's Exhibit No. 403 for Identification, was received in evidence.)

By Mr. Haycraft.

Q. Referring to Departments 371 and 373, Mr. Chance, just to make the record clear at this point——

3950

Mr. Weisman: Just a moment. I ask——

Q. (Continuing) —as to what merchandise, lines of merchandise, price lines were handled in those two departments.

Mr. Weisman: I ask that that part of the question which is an explanation and not a question be stricken out because I don't think it makes it clear. I think it makes it more muddled. This testimony has already been offered by Mr. Taylor who testified very fully. It is merely cumulative in its effect, if anything. If it is offered for the purpose of bolstering up Mr. Taylor's testimony, I object to it, and call the Court's attention to the 3951
fact that he wasn't even cross-examined on that though he doesn't—or anything, so he doesn't have to be bolstered up. If it is for the purpose of contradicting him, I object to it because he may not contradict his own witness.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

The Witness: May I have the question, please?

(The question was read.)

The Witness: $3.95 retail and up.

Mr. Weisman: Wait just a moment. May I have his answer?

(The answer was read.)

Examiner Bennett: We haven't had the answer yet, go ahead and answer.

The Witness: I did answer, Judge. $3.95 retail and up.

Mr. Weisman: In what department?

The Witness: 371 and 373.

By Mr. Haycraft.

3953 Q. Who was the buyer of that department at the time you took it over? A. Miss Morgan.

Q. Are those the same departments because of a change in the number, or are there two departments all the way through? A. There are two distinct departments.

Q. Will you describe just what the distinction is between the two departments? A. 371 department is the department which sells dresses. The 373 department is known as the "coat and suit department" for junior miss.

Q. And 371 is the Junior Miss? A. Junior Miss Dress Department.

Mr. Weisman: The witness——

Mr. Haycraft: Now——

Mr. Weisman: Wait just a minute. If you want
3954 to make his testimony intelligible. The witness said the price was $3.95 and up. Will you let us know whether or not that is retail or wholesale?

Mr. Haycraft: He said retail. The witness has said retail.

The Witness: I said retail.

Mr. Weisman: Oh, did you? All right. I apologize. I didn't hear.

By Mr. Haycraft.

Q. Did you buy any dresses from the Guild manufacturers to be sold by those departments? A. At what time?

Q. In January, 1936, prior to the red carding. A. Prior to the red card?

Q. Yes. A. Yes, we have.

Q. Can you testify as to the name of the manufacturer that sold dresses to Strawbridge & Clothier to be sold through those departments, which were sold to those departments? A. Referring to Guild members?

Q. Yes, to Guild members. A. I cannot remember them. Such a list was made up and is available.

Q. I ask you if this refreshes your recollection (indicating). 3956

Mr. Weisman: I didn't hear your answer. Will you please speak up? What did you just say?

The Witness: I asked him if he had any other record.

Mr. Weisman: I object to the witness asking questions. He was asked whether or not this paper refreshes his recollection.

The Witness: I will identify these resources as resources used by the Junior Miss Dress Department prior to our being red carded.

By Mr. Haycraft. 3957

Q. Then would you say that that paper did refresh your recollection? A. Yes, sir, it does.

Q. Then, are you testifying as to the resources of this particular department prior to the red carding with the members of the Guild; and, can you testify as to that from this document? A. Yes, sir.

By Examiner Bennett.

Q. Was that made up under your direction? A. Yes, sir.

Q. Did you know it to be correct at that time? A. It has been checked by me and our assistants at the time.

By Mr. Haycraft.

Q. Will you give those names, please? A. R. K. Junior Frocks, Ashley Frocks, Inc., Horowitz & Dubermann, Jane Junior Dresses, Inc., Jo-Anne Junior, Junior League Frocks, Silver Dresses, Will Steinman, Bon-Ray, Daniel
3959 Westheim, Junior Guild of Chicago, Rose-Anna Junior.

Q. And will you testify as to the price range, or can you testify as to the price range of garments purchased from those manufacturers? A. No, sir.

Q. Does this refresh your recollection? A. No, sir.

Q. Who, in your organization, can testify to that information?

Mr. Weisman: I object to it as immaterial.

Examiner Bennett: Sustained.

By Mr. Haycraft.

Q. Can you testify as to the percentage of garments handled through those two garments that were purchased from the Guild manufacturers? A. No.

3960 Q. No? A. I cannot.

Q. Do you know whether or not these manufacturers that you have named have sold any garments to the Strawbridge & Clothier Company since February—since the red carding went into effect in February, 1936? A. I could not answer that.

Q. Turning to Department No. 332, can you testify as to whether or not any of the Guild manufacturers—can you testify as to the names of Guild manufacturers that

were selling garments to Strawbridge & Clothier that were sold to that department? A. Only from the list which is available.

Q. I will ask you if this paper contains such a list (indicating)? A. Yes, sir.

Q. Does that paper refresh your recollection? A. Yes, sir.

Q. Can you testify from that? A. King & Weill, Star Maid, Banner Manufacturing Company, Davis, Adler & Adler, Mutual Rosenbloom, David Lowenstein, O. Noodleberg, Bernard Appel, Townley Frocks.

Q. Can you testify as to the price range of garments purchased from those manufacturers? A. No. 3962

Q. You cannot? A. No, sir.

Q. Does that refresh your recollection? A. I would not know if those are correct (inspecting the document).

Q. Can you testify as to the percentage of garments purchased and sold by your department, that department, rather, that were purchased from Guild manufacturers? A. No.

Q. Does this refresh your recollection (indicating)? A. No, sir; it does not.

Q. Turning to Departments 338 and 358, can you testify as to the names of Guild manufacturers that were selling Guild merchandise to Strawbridge & Clothier that was sold to that department prior to the red carding in February, 1936? A. From a list prepared I can.

Q. Is this such a list (indicating)? 3963

Mr. Haycraft: I ask that these documents be marked for identification.

(Documents were thereupon marked for identification Commission's Exhibits 404-A, 404-B, 405-A, 405-B, 406-A, 406-B, 407, 408 and 409.)

Mr. Weisman: May I see them, Mr. Haycraft?

Mr. Haycraft: No. You have no right to see this. It is simply marked for identification. It is not offered in evidence.

Mr. Weisman: May I have that question and the reply by Mr. Haycraft on the record?

Examiner Bennett: You will notice it is on the record. If there is no necessity for a disclosure of course when they are being marked counsel may properly decline at that time. If there is an offer, of course you will be permitted to see them, or if they are the part of any testimony given by a witness.

3965 *By Mr. Haycraft.*

Q. I will ask you to identify each one of these for the record. What is 404-A and B? A. As I recall, this is a copy of questions submitted to us by the Federal Trade Commission.

Mr. Weisman: Now, wait just a minute. Now that the witness has identified this I would like to see it.

Mr. Haycraft: No, you cannot see it.

Mr. Weisman: I appeal to your Honor.

Examiner Bennett: Yes, you may see it.

Mr. Weisman: Mr. Haycraft, the Court has said I may see it.

3966 Mr. Haycraft: No. It is not offered in evidence.

Mr. Weisman: It is the subject matter of testimony.

Examiner Bennett: There is a possibility of a question on identification as to its identification. If you are going into identification I think it is proper to let the attorney see it.

Mr. Haycraft: Is that your Honor's ruling?

Examiner Bennett: It is.

Mr. Haycraft: I take an exception.

Examiner Bennett: You may.

By Mr. Haycraft.

Q. What is 405-A and B? A. 405 is a copy of a reply to those same questions from Department No. 331 prepared by Miss Flynn and myself.

Mr. Weisman: That isn't even courteous. I said, "Wait a moment until I look at them," and then he said, "No, I won't." Will your Honor tell him that he ought to?

Examiner Bennett: Well, I will let him go ahead. 3968

By Mr. Haycraft.

Q. What is Exhibit 406? A. 406 is the reply to the same set of questions prepared by the buyer of Department 350.

Q. Who prepared it? A. Miss McAllenny.

Q. Did you have anything to do with it? A. I supervised the preparation.

Q. 407. A. The same thing, answer to the same set of questions submitted by the Federal Trade Commission and prepared by Miss Morgan in Department 371 and Department 373.

Q. Did you have anything to do with it? A. I checked the resources and answered the question form. 3969

Q. 408? A. 408 is a copy of the reply to the questions submitted by the Federal Trade Commission prepared by the buyer of Department 382.

Q. Who prepared it? A. Mrs. Ransdell.

Q. Did you have anything to do with it? A. I assisted in checking the resources.

Q. 409? A. 409 is a—are the replies to the same set of questions submitted by the Federal Trade Commission and prepared by Mr. March, 358 department.

3970 *Samuel J. Chance—For Commission—Direct.*

Q. Did you have anything to do with it? A. I checked the list of resources there.

Q. Now, will you please testify as to the resources of that department with the Guild purchases; that is, members of the Guild prior to February, 1936? A. May I check with that list which I prepared, helped to prepare?

Examiner Bennett: Now, if you have any questions, Mr. Weisman, as to the identification—oh, well, all right.

Mr. Weisman: At the proper time I will make the proper motions.

Examiner Bennett: All right.

3971

A. A—One Dress at 1400 Broadway; International Dress——

Mr. Weisman: Just a moment. It is perfectly obvious that the witness hasn't got a refreshed recollection. He has the ability to read English. He is just reading from it. If it is going to refresh his recollection let him look at it and have him put it down and tell us how his recollection is refreshed.

Examiner Bennett: Well, that is not necessary if he knows that the matter is correct, or did know that it was correct at the time that he made it.

3972 *By Mr. Haycraft.*

Q. Do you know that that was correct? A. I testified as to that, sir. I helped to prepare this list of resources.

Examiner Bennett: And you know it to be correct?

The Witness: Yes, sir.

Examiner Bennett: You did know it to be correct when you prepared it?

The Witness: International Dress, 1400 Broadway.

Mr. Weisman: What is that first one?

The Witness: Aywon Dress is the first one. Within & Schnider.

Mr. Weisman: What was the third one?

The Witness: Within & Schnider.

Mr. Weisman: Yes.

The Witness: I mentioned E. & M. Marcus Weinberg——

By Mr. Haycraft.

Q. Where are they located? A. E. & M. Marcus in 3974
Boston. Weinberg, Weinberg & Alpern, 1400 Broadway.

Q. That is New York City? A. New York City.

Q. Within & Schnider is in Philadelphia, is it not? A. Yes, sir. C. H. D. Robbins, 1375 Broadway; Rosen Brothers, 1400 Broadway; Bernard Appel, Boston; Lyttle Brothers, 1400 Broadway; George Hess, 1385 Broadway; Anderman & Bob Burns, 1385 Broadway; F. E. D. Dress, 1400 Broadway; Cecele Dance Frock, 1584 Broadway; Goldstein & Entin, 1410 Broadway; Schultze-Zuch, 1385 Broadway; Sheila-Lynn Dresses, 525 Seventh Avenue.

Examiner Bennett: That is a list of your sources of supply for what?

The Witness: Prior to our being red carded for Departments 338 and 358. 3975

Examiner Bennett: All right.

Mr. Weisman: I believe your Honor is slightly in error. He said right along that these were some of the sources. Your Honor has said the sources.

Examiner Bennett: Well, the sources of supply. They were sources of supply.

Mr. Weisman: That is right.

Examiner Bennett: I believe I said sources of supply.

Mr. Haycraft: With the Guild, from the Guild manufacturers.

Examiner Bennett: Well, they were sources of supply.

Mr. Weisman: Yes.

Examiner Bennett: Of the Guild manufacturers.

The Witness: That is right, sir.

Mr. Weisman: There is no doubt we sold the merchandise. If we didn't we wouldn't be interested in it.

By Mr. Haycraft.

3977 Q. Have you prepared—strike that out. Have you had prepared a statement showing the total volume of business done with the various sources of supply, members of the Guild prior to February, 1936, during the year 1935? A. Yes, sir; I have.

Mr. Haycraft: Mark that for identification.

(List of Guild manufacturers and amount of business transacted from February 1, 1935, to January 31, 1936, with Strawbridge & Clothier was marked for identification Commission's Exhibit 410.)

By Mr. Haycraft.

3978 Q. Is this paper I now hand you such a statement? A. Yes, sir. That is the list that was made by our accounts payable department.

Q. Who prepared it? A. Why, it was prepared by——

Mr. Weisman: I have no objection to its competency, if that is what you want.

Mr. Haycraft: Certainly. Thank you.

Mr. Weisman: Offer it and it is O.K. with me.

Mr. Haycraft: I offer this in evidence, Mr. Examiner.

Examiner Bennett: It will be received.

Mr. Weisman: No objection. What is its number?

The Reporter: Commission's Exhibit 410.

(The list referred to, heretofore marked for identification Commission's Exhibit 410, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. Were the garments purchased from these sources of supply during 1935 and January, 1936, sold through the departments which you have referred to in your testimony here to-day? A. They were sold to the departments which 3980
I supervised.

Q. Would they include 331, 350, 371, 373, 382, 338 and 358? A. Yes, sir.

Mr. Weisman: Wait a minute, please. Don't answer. I object to that question, "would they include that." I mean, the question is perfectly immaterial. If he states would they include that —he stated that they would cover all of the departments that he supervised. Now, his testimony on the point of what departments he supervised were departments 491, 358, 338, 371, 331, 350, 492, 493, 491, 473, 382 and 358. I submit that the question "Would it include those?" is perfectly immaterial. 3981

Mr. Haycraft: Well, his testimony was as to the Guild merchandise and what departments they were sold in.

Examiner Bennett: Yes. All right. The objection is overruled.

Mr. Haycraft: Mark these for identification.

(Documents referred to were marked for identification Commission's Exhibits 411, 412, 413 and 414.)

By Mr. Haycraft.

Q. I show you Commission's Exhibits 411 to 414, both inclusive, and ask if you can identify them? A. I can.

Q. What are they? A. They are retail price line comparisons for various departments which I supervised for the year 1935 as against 1936, February to end of June—February 1, to end of June, inclusive.

Mr. Haycraft: I offer these.

By Mr. Haycraft.

Q. Did you give the department numbers? A. Yes, sir.

3983

Mr. Haycraft: I offer them in evidence.

The Witness: I said there were several departments which I supervised.

By Mr. Haycraft.

Q. Department 331, Commission's Exhibit 414; Department 338, Exhibit 412; Department 358, Commission's Exhibit 413; and Department 371, Exhibit 414. Is that correct? A. Yes, sir.

Mr. Haycraft: I offer those in evidence.

(The documents referred to, heretofore marked for identification Commission's Exhibits 411, 412, 413 and 414, were marked as exhibits and received

3984 in evidence.)

Mr. Haycraft: Mark this for identification.

(Document referred to was marked for identification Commission's Exhibit 415.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 415. I ask you whether you can identify it. A. Yes, sir.

Q. What is it? A. It is a comparison chart showing the increase or decrease——

Mr. Weisman: Just a moment. I object to the witness testifying as to what it is. If he wants to identify it and then it is going to be put in evidence, that is one thing, or how it was prepared, but not a description of what a document is. That is for the Court upon its examination to state.

Examiner Bennett: He may characterize it in a general way.

Mr. Weisman: I except.

A. It is a comparison chart showing the increase or de- 3986
crease in a breakdown of departments that have formerly purchased from Guild manufacturers under my supervision, and those other departments that did not purchase from Guild manufacturers.

By Mr. Hayeraft.

Q. Those other departments are under your supervision? A. Yes, sir.

Examiner Bennett: That is, in the same line of merchandise?

The Witness: Same line of merchandise; yes, sir.

By Mr. Hayeraft. 3987

Q. Now, for what period of time? A. It is February 1 to end of June, comparison of 1935 and 1936.

Q. Did you have anything to do with the preparation of this? A. This is prepared by our statistical department.

Q. Did you check it in any way? A. Checked it against our own figures, sir.

Q. The first column there under February, 1935——

Mr. Weisman: I object to all of this identification of the first column or the second column and all of this. I submit either the paper is competent or it isn't competent. If it is competent it should go into evidence and thereafter speak for itself; if it isn't competent I think we have passed the bounds of propriety with regard to a description of it.

Mr. Haycraft: I think, Mr. Examiner, that there should be certain explanations of the figures.

Mr. Weisman: Well, you can give the explanations after it goes into evidence, if it is competent.

3989 Mr. Haycraft: I met with that same objection last time. That is exactly what I did before.

Examiner Bennett: It is all right.

By Mr. Haycraft.

Q. The first column there under February, 1935.

Mr. Weisman: May I have an exception?

By Mr. Haycraft.

Q. (Continuing) There are certain typewritten figures. What do they represent? A. In February, 1935——

Q. What do they represent? That is dollars, cents? A. It represents the total dollar volume.

3990 Q. Expressed in units or dollars? A. Expressed in thousands.

Q. All right. In February, 1936, column, what do those typewritten figures represent? A. That represents total thousands of dollars of business, net sales for those departments for that particular period.

Q. All right. And the third column is Inc. Dec. What does that represent? A. That represents the increase or the decrease of the 1936 figure for the same period over the 1935 figure.

Q. If it is an increase what color is the type? A. Black.

Q. If it is a decrease what color is the type? A. Red.

Q. Does that same description apply to the balance of the exhibits and the other respective columns? A. Yes, sir.

Q. Now, on the right-hand, the lower right-hand column, there seems to be some totals drawn off. What do they represent? A. It represents the total of these figures above here for the period which this is drawn out for, five months.

Mr. Haycraft: That is offered in evidence, Mr. Examiner. 3992

Mr. Weisman: May I examine a moment on it?

By Mr. Weisman.

Q. Do you know where the rest of this charming piece of paper is, this part that was cut off here? A. No, sir.

Q. Do you know what was contained thereon before it was cut off? A. That is the way it was submitted to me.

Q. Can you give me any explanation for the present seeming mutilation? A. No, sir.

Mr. Haycraft: I object to the use of the word "mutilation."

Mr. Weisman: It is perfectly obvious that it is mutilated. Something was here that has been cut off. 3993

I have no objection.

Examiner Bennett: What?

Mr. Weisman: I say, I don't object to this going into evidence.

Examiner Bennett: All right. It will be received in evidence.

(The document referred to, heretofore marked for identification Commission's Exhibit 415, was marked as an exhibit and received in evidence.)

By Mr. Haycraft.

Q. What departments have you included in this Commission's Exhibit 415, the departments buying from Guild?

Mr. Weisman: Wait a minute. Just a minute. What is that question?
(Question read.)

A. 331, 338, 350——

Mr. Weisman: Wait a minute. 331, 338?
The Witness: 350.
3995 Mr. Weisman: 350?
The Witness: 371.
Mr. Weisman: Yes?
The Witness: 373.
Mr. Weisman: Yes.
The Witness: 358. Have I mentioned that?
Mr. Weisman: No.
The Witness: 358. That is all.

Q. How about the 382? A. 382 is not in that figure.

Q. Why did you not include No. 352? A. Because the total sum of purchases from the Guild in that department was very insignificant.

Q. Very insignificant? A. Very insignificant.

3996 Q. The balance of the departments that you gave in your original testimony are included in the statement "No Guild Resources"? A. Yes.

Q. Yes? A. That is true.

Q. And——

Mr. Weisman (interposing): I ask—will you ask him why he did not include 491, Department 491?

By Mr. Haycraft.

Q. In which division did you include Department No. 491? A. Department No. 491 is included in the division which is specified as "Non-Guild Resources."

Q. Why did you include 491 in that division? A. Because no purchases were made from Guild resources for that particular department.

Q. Now, Mr. Chance, have you formed an opinion as to the effect of red carding by Guild manufacturers selling Strawbridge & Clothier upon the business of the respective departments to which you testified this morning aside from 350, which you have already testified to, those departments being Nos. 331, 371, 373, 382, 338, 358, from 3998 the standpoint of price lines—the effect upon price lines sold by these various departments?

Mr. Weisman: Objected to as incompetent, immaterial and irrelevant.

Examiner Bennett: Overruled; you may answer.

Mr. Weisman: Exception.

By Examiner Bennett.

Q. The question is: Have you an opinion, that is what Mr. Haycraft wants to know. A. Yes, sir, I have.

By Mr. Haycraft.

Q. Will you state it, please? A. Our comparison chart 3999 which we have made up definitely shows that certain price lines that were red carded with the Guild resources show a decrease upon a comparison of 1935.

There are certain type of dresses or types of dresses that we had difficulty in securing at the time we were red carded and subsequently caused loss of sales.

In addition to that the cost of sending out buyers to various markets to try to develop or buy merchandise to

replace our Guild resources was, in addition to our usual expenses, an addition to the expense or cost of doing business.

Mr. Weisman: I move that the answer be stricken out as irresponsive.

Examiner Bennett: I will let it stand.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. Have you an opinion as to this red carding upon the good will of Strawbridge & Clothier with regard to Departments Nos. 331, 371, 350, 373, 382, 338, 358? A. Yes, sir, I have an opinion.

4001

Q. The question is just if you have an opinion. A. I do.

Q. Will you please state it? A. The Guild manufacturers represented the highest type of manufacturers in the United States, if not the world——

Mr. Weisman (interposing): I ask that the witness be directed to answer the question and not to give us a stump speech as to Guild manufacturers. He was asked a very simple question and I ask that he answer it. We all know that the Guild manufacturers are the best in the world, and that is the reason they are Guild manufacturers.

4002 *By Examiner Bennett.*

Q. Tell us your opinion and then you can make any explanation of it that you desire.

Mr. Weisman: I respectfully object to the Court's direction of the witness to give an explanation.

Examiner Bennett: All right. Overruled.

Mr. Weisman: Exception.

A. There are certain type of dresses that we had difficulty in securing——

Examiner Bennett: That is not an answer.

Mr. Weisman: I object.

By Mr. Haycraft.

Q. What was your opinion? I asked you to give your opinion as to the effect on the good will. A. It affected our good will.

Q. In what way did it affect your good will, adversely or favorably? A. Sir?

Q. Did it affect your good will adversely or favorably? 4004
A. Adversely.

Q. Explain how it did. A. The Guild resources represented the highest degree of styling and the better makers, all the better makers in the dress market. Our buyers had had a certain number of years' experience in conducting, contacting and buying from these same resources. They have, in turn, built up a certain following for certain type of dresses; customers have been over a period of years, in long period of years, accustomed to buying dresses of a certain calibre or character from the departments and from our store, and when they found that we did not carry that same type or class of merchandise in our stocks that has resulted in the loss of sales. When they found out that we did not carry in our stocks this same type of merchandise, we would lose the sales. 4005

Mr. Weisman: I ask that the answer be stricken out as irresponsive and showing no foundation.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. I believe you testified in respect of—strike that out—I will ask you, do you have an opinion as to the effect

upon the good will of Strawbridge & Clothier in the divisions that you have under your supervision, or departments, as the result of the inability of Strawbridge & Clothier to place re-orders with Guild manufacturers for garments that they had had in stock at the time of the red carding; at the time the red carding took place?

Mr. Weisman: Objected to as incompetent, immaterial and improper in form; the question is hardly intelligible, and I do not believe it is understandable.

Examiner Bennett: I do not think so. Overruled. You may answer.

4007 Mr. Weisman: Exception.

By Mr. Haycraft.

Q. The question is, have you an opinion? A. Yes, sir, I have.

Q. The question was if you had an opinion. A. I said yes, sir.

Q. Will you state the opinion, and give an explanation of it? A. In the stocking of dresses——

Q. (Interposing) I believe I asked you first if you had an opinion and then to give an explanation for it. A. Well, may I have the question again, please? Maybe I did not understand the question.

(The question was read to the witness.)

4008

A. Yes, it has affected our sales.

By Examiner Bennett.

Q. First, have you got an opinion on that, Mr. Witness? A. Yes, sir, I have got an opinion on that, sir. It has an effect on our good will, adversely.

Q. Yes. Now, if you want to make an explanation, why— A. I would, sir. When a customer is in the habit

of securing a product or dresses from any particular store and suddenly that particular type cannot be procured for them, particularly an item that is fashionable as dresses, and people do not wish to wait for them as styles change frequently, they are undoubtedly—go to other stores to shop, and whether—and there is no question in my mind that the good will of our store certainly is affected in that way.

(Whereupon, at 12 noon, a recess was taken until 2 o'clock P. M.)

4010

AFTERNOON SESSION, 2 P. M.

Examiner Bennett: Be in order, please.

By Mr. Haycraft.

Q. I believe you have testified, Mr. Chance, that there were outstanding orders in some—with Guild manufacturers who were furnishing garments for some of your departments, I believe 350, if I remember correctly. I will ask you whether or not, as——

Mr. Weisman: Wait a minute. May the beginning of that question be stricken out?

By Mr. Haycraft. 4011

Q. As divisional——

Examiner Bennett: Well——

Mr. Haycraft: I would like to complete my question.

Examiner Bennett: I think it is all right. Let it stand. Overruled.

By Mr. Haycraft.

Q. —as divisional manager whether or not you attempted to obtain garments on orders placed with Guild manufacturers that were pending at the time of the red carding? A. Yes, sir; I have.

Q. Will you testify as to what efforts you made to have those orders filled?

Mr. Weisman: I submit that has already been answered.

Mr. Haycraft: No, it hasn't.

Mr. Weisman: This morning, unless you have something particular. I remember distinctly he

4013 testified that he told his buyers to go out and that they went out and found it very difficult, or words to that effect.

Mr. Haycraft: That was some specific department. Now, I am referring to his whole division, all the Guild manufacturers that are involved in this proceeding. That is the reason I prefaced my question with the remarks that I did.

Mr. Weisman: I submit the preface is wrong and the question is wrong, and I object to it in its form, and I ask that we have a proper question put on the record so that we may know what is what.

Examiner Bennett: Overruled. Go ahead.

Mr. Haycraft: Will you read the question, please?

4014 (Question read.)

A. We mailed letters to these manufacturers, registered letters indicating that we wished a return signature for the receipt of those particular letters urging the delivery of merchandise on order with Guild houses that we were red carded with.

By Mr. Haycraft.

Q. Will you testify as to the name of the manufacturers to whom you sent such letters?

Mr. Weisman: Objected to unless the letters are offered, and they are the best evidence. He has them before him.

By Mr. Haycraft.

Q. I show you Commission's Exhibit 416 for Identification, Mr. Chance, and ask you if that is one referred to in your testimony a moment ago? A. This is a duplicate of a letter which I have dictated and sent to H. Robinson. 4016

Q. You sent the original of that? A. Yes, sir.

Q. Now, did you send letters in exactly the same language to other manufacturers?

Mr. Weisman: Objected to unless he specifies the manufacturers. He has got the list there. He is trying to make a general statement when he knows there was only a particular number of letters sent. That is another exhibition of the way counsel for the Commission is trying to put innuendo in this case instead of evidence. Now he has got the letters in his hand. Why aren't the letters offered and then we will know who they sent them to. The word "others" might mean everybody or nobody or somebody. I object to this form of pro- 4017 cedure.

Examiner Bennett: Yes. Please object and don't fill the record with a lot of harangue.

Mr. Haycraft: May I——

Examiner Bennett: Yes, go ahead.

Mr. Haycraft: What is the question?

(Question read.)

Mr. Weisman: Objected to.

Examiner Bennett: I will ask you to be specific. I wish you would say so and so, and so and so, and so and so.

By Mr. Haycraft.

Q. Did you send a letter in exactly the same language to Gardner Schwartz, New York City; Goldstein & Enten, Boston, Mass.; Harry Genz, Inc., New York City; Harry Frank, New York City; Robinson Brothers, Boston, Mass.; Frank Star-Friedlander, Inc., New York; Herman Bistel, New York City? A. May I see the letters, please?

4019 (The letters were handed to the witness.)

A. Yes, sir. These are duplicates of letters which I have sent.

Q. Do they name the individuals indicated? A. The individuals cited are upon each copy.

Mr. Haycraft: All right. I will offer in evidence Commission's Exhibit 416 for Identification, the first one which the witness identified.

By Mr. Haycraft.

Q. Did you receive any reply to those letters?

Mr. Weisman: I object to any reference to any letters not in evidence.

4020 Examiner Bennett: All right. I think probably your objection is good except as to that letter.

(The letter referred to, heretofore marked for identification Commission's Exhibit 416, was marked as an exhibit and received in evidence.)

Mr. Haycraft: Then I offer in evidence again Commission's Exhibits 417 to 423.

Examiner Bennett: All right. Received.

Mr. Weisman: No objection, if they are offered for the purpose of merely showing that he wrote to these people and requested merchandise, and without any offer that there is any truth of the statements therein contained, otherwise it would be merely hearsay what he wrote to somebody.

Mr. Haycraft: I am not restricting the offer in any respect.

Mr. Weisman: Then I object to them unless the offer is restricted to show a demand for the merchandise and nothing else. They are all the same, so if you read one, Judge, you have read them all.

Examiner Bennett: They may be received. If 4022
there is an objection it is overruled.

Mr. Weisman: May I ask whether or not they are received generally?

Examiner Bennett: They will be received for all purposes.

Mr. Weisman: Exception.

(The letters referred to, heretofore marked for identification Commission's Exhibits 417, 418, 419, 420, 421, 422 and 423, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. Did you receive any replies to those letters? A. Did not. 4023

Q. Did you receive the goods from those manufacturers? A. I am sorry. I didn't get the question.

Q. Did you receive any of the goods that were on order from those manufacturers? A. We did not.

Mr. Haycraft: Your witness.

Mr. Weisman: I would like to have the exhibits in this case commencing with Exhibit No. 400 right down.

(The exhibits referred to were handed to Mr. Weisman.)

Cross-examination by Mr. Weisman.

Q. Now, Mr. Chance, what is your present position? A. Divisional merchandise manager for Strawbridge & Clothier.

Q. And I understand that you became divisional merchandise manager in February of this year? A. Yes, sir.

Q. In what part of February did you become divisional merchandise manager? A. Officially, February 1, 1936.

4025 Q. As such divisional merchandise manager, are you one of the executives of the Strawbridge & Clothier organization? A. I have not asked whether I am on the executive board or not. I am sorry. I misunderstood your question. May I have that again?

Q. Well, I understood that you said that you are not on the executive board. A. May I have your question?

Q. No. Answer that. Did you say you were not on the executive board?

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: Just answer responsively. If so, say so.

A. I am so considered.

4026

By Mr. Weisman.

Q. By whom? A. By the firm, my business associates.

Q. When you say "by the firm," whom do you mean? Strawbridge & Clothier is a corporation. It is an inanimate thing. A. I mean the officers of that organization.

Q. Who are those officers who so consider you? A. Mr. Tily as the president.

Q. Yes. A. We have various other officers, general merchandise manager, divisional merchandise manager, managers.

Q. What is the executive board that you refer to? A. That was simply a statement. I can't go into it, sir, not a secret; it is a misstatement.

Q. I want to know from you; I am asking you what is the executive board? A. I can't answer your question.

Q. What do you mean by that? You don't want to answer? A. I don't know.

Q. Where did you hear that term? A. Well, I have heard that term quite often in life.

Q. Did you ever hear it as applied to Strawbridge & 4028
Clothier? A. No, sir.

Q. What did you mean when you said you weren't one of the executive board if you never heard of it in connection with Strawbridge & Clothier?

Mr. Haycraft: I don't see, Mr. Examiner—he didn't say that. I object to the question.

Mr. Weisman: Will you please stop interrupting me until my question is asked?

The Witness: I corrected my statement and I said I was sorry I misunderstood you.

By Mr. Weisman.

Q. Did you understand me to ask whether you were a member of the executive board when you made that reply? 4029
A. I thought I heard that; yes, sir.

Q. Shortly after, or in the same week that you became divisional merchandise manager, Strawbridge & Clothier had this difference with the Guild; isn't that right? A. What do you mean by difference?

Q. Well, the Guild arrived at a conclusion, correctly or incorrectly, that it was no longer your policy to correct style originations? A. We were red carded by the F.O.G.A. in that early part of February.

Q. And that is what you understood by it? A. Well, I wanted to make sure.

Q. You did? A. Yes.

Q. Well, do you not so now understand it? A. What?

Q. In other words, that the Guild has red carded you, or that the manufacturers have received notification by red card, or by other colored card that it is no longer your intention to protect style originations of its members?

Mr. Haycraft: That is objected to as incompetent, immaterial and irrelevant, and not within the knowledge of this witness.

Mr. Weisman: This witness has suddenly be-
4031 come frightfully ignorant on his cross-examination, whereas on his direct examination his perspicacity was remarked to an extraordinary degree.

Examiner Bennett: Overruled.

A. That was at the discretion of the Guild that we were red carded. We took no part in red carding ourselves.

By Mr. Weisman.

Q. I did not say that you did. I did not say that you did. I say, did you not so understand that Guild members are now refusing to sell you merchandise because it is on the information, correctly or incorrectly, that it is no longer your policy to protect style piracy defenses; pro-
4032 tect against style piracy? A. I so assume. I would assume such.

Mr. Haycraft: I object to it as incompetent, immaterial and irrelevant as to what this witness understands.

Mr. Weisman: It is very important.

Mr. Haycraft: It is of no importance.

Examiner Bennett: Overruled.

By Mr. Weisman.

Q. The reason that the Guild may have had for red carding was known to you, was it not?

Mr. Haycraft: I object to that.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. The reason that the Guild may have for red carding this witness, or his firm, I think are most important.

Examiner Bennett: I sustained the objection on the theory that the question has been answered. I see now that it has not been answered. I will let him answer. 4034

A. I assume such.

Mr. Weisman: Thank you, your Honor.

Mr. Haycraft: I ask your Honor to instruct the witness that he is not to answer until I have had an opportunity to get in my objection.

Examiner Bennett: Please do so.

By Mr. Weisman.

Q. As a matter of fact, as an executive of Strawbridge & Clothier, do you not know at the present time that it is not the policy of Strawbridge & Clothier to protect style originations of members of the Guild? 4035

Mr. Haycraft: I object to it as incompetent, immaterial and irrelevant, and not proper cross-examination.

Examiner Bennett: Overruled. You may answer.

A. I do.

By Mr. Weisman.

Q. You do? A. Yes, sir.

Q. As a matter of fact, that change in policy has been in force ever since February of this year; is that so? A. Yes, sir.

Q. Prior to February, 1936, you know, and knew, did you not, that the firm of Strawbridge & Clothier caused all of its buyers to place on its orders the statement in word or substance that the seller warranted the goods as not being copies of originations originated or created by Fashion Originators Guild of America? A. Yes.

Q. Is that so? A. Yes.

4037 Q. And you also know that Strawbridge & Clothier, prior to the date last referred to, also, by its orders, reserved the right to return any merchandise which was not as warranted; is that so? A. Prior to February 1, 1936, I am not in touch with whatever conditions or clauses or arrangements with the Fashion Originators Guild of America there were except as others explained it to me; namely, as it was explained to me by the divisional merchandise manager at that time.

Mr. Weisman: May we have Commission's Exhibit 306?

Examiner Bennett: You may.

Mr. Weisman: Here it is. Thank you.

4038 *By Mr. Weisman.*

Q. That stamp in words and figures is as follows: "This order is placed upon the seller's warranty that the above garments are not copies of styles originated by members of the Fashion Originators Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted." Was it not in that form?

By Examiner Bennett.

Q. Did you not say you had no knowledge of the relations between the Guild and your employing firm prior to February 1, 1936? A. No, sir. I said I did not know what the exact detail of the conditions were, but I do know of the stamp that we were asked to use by the divisional manager. I have a copy of that stamp here in my pocket that I would like to show if I may be permitted to do so.

Examiner Bennett: You may proceed.

By Mr. Weisman.

Q. As a matter of fact, prior to that time you were a 4040
buyer, were you not? A. Yes, sir.

Q. In the course of the performance of your duties as buyer, were you not instructed to use this stamp? A. Yes, sir; I was.

Q. And did you use it? A. I did.

Mr. Haycraft: I object unless the witness is allowed to look at this copy, and the copy that he has of his own stamp to find out if the stamp was the same, the stamp that he was required to use was the same stamp that counsel is now referring to and reading from. I think that the witness has a right to compare the two in order to be certain that his stamp is the same as the other stamp. There is no indication here that it is the same. 4041

Mr. Weisman: It certainly goes to a test of his credibility, and to his knowledge for that matter, as to the knowledge that he had of the conduct of the business.

Examiner Bennett: One moment. Is that the same stamp used by this firm?

Mr. Weisman: No, I do not have a copy of the stamp but this was used generally.

By Mr. Weisman.

Q. Have you got a copy of that stamp with you? A. I have a copy of the one that we used. May I refer to that, your Honor?

Examiner Bennett: You may refer to it.

By Mr. Weisman.

Q. Will you do so? A. Yes, sir.

Q. Have you a copy of the stamp that Strawbridge & Clothier used prior to February 1, 1936? A. This is the stamp (indicating certain markings on a sheet of paper).

4043 Q. Have you produced it? A. The stamp?

Q. Yes. A. No, this is not the stamp.

Q. Have you produced the legend? A. Yes, this is it.

Q. This is it? A. Yes, sir.

Q. Will you let me see it? A. Yes, sir.

Q. May I have it? A. Here it is.

Mr. Weisman: May I offer this in evidence, if your Honor please?

Examiner Bennett: The objection is overruled. It will be received in evidence as Respondents' Exhibit 20.

(The legend referred to was marked for identification Respondents' Exhibit 20 and received in evidence.)

4044

By Mr. Weisman.

Q. At the time that you were using this stamp you were a buyer for Strawbridge & Clothier? A. Yes.

Q. Is that correct? A. Yes, sir.

Q. You were not divisional merchandise manager? A. No.

Q. You were not? A. No.

Q. Now, are you sure about that? A. That is correct.

Q. That is correct? A. Yes, sir.

Q. What department were you a buyer for? A. The House Dress Department.

Q. House what? A. House dress.

Q. House department? A. No, House Dress Department.

Q. House Dress Department? A. Yes.

Q. What is the number of the House Dress Department? A. 492.

Q. Any other number? A. Yes, 493.

Q. 492 and 493? A. Yes.

Q. Prior to February 1, 1936, were you connected with Department No. 373? A. No, sir. 4046

Q. Prior to February 1, 1936, were you connected with Department No. 382? A. No.

Q. Prior to February 1, 1936, were you connected with Department No. 385? A. No.

Q. Prior to February 1, 1936, were you connected with Department No. 491? A. No.

Q. Prior to February 1, 1936, were you connected with Department No. 358? A. No.

Q. Prior to February 1, 1936, were you connected with Department No. 338? A. No.

Q. Prior to February 1, 1936, were you connected with Department No. 371? A. No.

Q. Prior to February 1, 1936, were you connected with Department No. 331? A. No. 4047

Q. Prior to February 1, 1936, were you connected with Department No. 350? A. No.

Q. Since you have become divisional merchandise manager have you, in the course of the performance of your duties had occasion to ascertain what was the general conduct of your particular departments, those particular departments which I have enumerated prior to February 1, 1936? A. Well——

Mr. Haycraft: I object to it as incompetent, immaterial and irrelevant, and no foundation, because this was not gone into on his direct testimony. So far as the direct testimony is concerned, he was asked about matters only during the time that he was divisional merchandise manager.

Examiner Bennett: The objection is overruled.

By Mr. Weisman.

Q. The Court said you may answer. A. I do not quite understand that question.

4049 Mr. Weisman: May I have it read to him? I will have it read to you if the Court so orders, and then say what there is you do not understand and I will try to explain it to you if you will tell me what it is that you do not understand.

Examiner Bennett: You may read the question. (Question read.)

By Mr. Weisman.

Q. What is there you do not understand about it? A. What do you mean by "general conduct"?

Q. Well, do you know, from your examination of the operation of those departments prior to February 1, 1936, whether or not each and every buyer of those departments upon placing an order, had a stamp placed upon it similar

4050 to—no, not similar but exactly identical with respondents' Exhibit 20 in evidence: "yes" or "no"? A. I do not know.

Mr. Haycraft: I object to that. That is what I was afraid would come up. I move to strike the answer.

Examiner Bennett: He says he does not know. That would seem to settle that.

By Mr. Weisman.

Q. Do you mean to say that you do not know whether or not prior to February 1, 1936, Strawbridge & Clothier attached to their orders for those departments, other than the one which you were buyer in, their so-called "warranty stamp"? A. No.

Mr. Haycraft: I object to that. I move the answer be stricken.

Examiner Bennett: Overruled.

A. I do not know.

By Mr. Weisman. 4052

Q. Did you, prior to testifying here, or upon your accession to the position of divisional merchandise manager, seek to ascertain whether or not such stamp had been affixed by the buyers to orders in the other departments?

Mr. Haycraft: Same objection, if your Honor please.

Examiner Bennett: Overruled.

A. That is not my responsibility—that was not my responsibility at that time, I mean.

By Mr. Weisman.

Q. What? A. That was not my responsibility at that 4053
time.

Q. I do not care whether it was your responsibility or not. I asked you if you found that out to be a fact?

Mr. Haycraft: Same objection.

Examiner Bennett: Overruled.

A. I do not.

By Mr. Weisman.

Q. Did you,—strike that out. Did you not in the exercise of your duties as merchandise manager for Strawbridge & Clothier Company think that it was encumbent upon you to ascertain in some degree what had been the practice in these departments before you came there?

Mr. Haycraft: That is objected to on the same ground as incompetent, irrelevant, and immaterial, and not a part of the direct testimony.

Examiner Bennett: Overruled.

4055 A. That is one phase of the business that I did not check into and do not know and cannot answer.

By Mr. Weisman.

Q. Did you make any investigation of any kind, nature, or description as to what had occurred in these departments prior to the time that you got in there as divisional merchandise manager thereof? A. Examinations as to what?

Q. That is what I am trying to have; that is what I am trying to find out from you.

Q. When you became divisional merchandise manager on February 1, 1936, or at any time since then have you made any study or investigation with regard to the conduct of those various departments prior to your having
4056 become divisional merchandise manager, Mr. Chance? A. Is the word "conduct" left out. I do not quite understand. What is the meaning of the word "conduct"? What is meant by "conduct."

Q. No, the word "conduct" is not left out. Please answer it with the word "conduct" in it.

The Witness: Judge, I would like to know what is meant by the word "conduct."

Examiner Bennett: That has a meaning, a definite meaning, one or several of them, and one is the way in which the business was conducted.

Mr. Weisman: Yes.

Examiner Bennett: The routine and so on.

The Witness: I haven't made any, Judge, as to any specific routine as has been brought out in the way of the stamp, I mean, that is one specific instance that I can mention. The only thing that I was vitally interested in was reviewing at the time things came up, conduct, or the way sales fluctuated, price lines. I mean, that would generally interest me, that would be helpful in making my 4058 plans.

By Mr. Weisman.

Q. Well, let me ask you this: Do you know what was the budget of the Strawbridge & Clothier organization, the advertising budget for these departments for the months January 1, 1935, to June 1, 1935?

Mr. Haycraft: That is objected to as irrelevant, immaterial and improper cross-examination.

Examiner Bennett: I will sustain the objection.

By Mr. Weisman.

Q. Have you any knowledge of the number of promotional sales—— 4059

Mr. Haycraft: You did not make any offer of proof. I don't want to interrupt, but you didn't make any offer of proof.

Mr. Weisman: Oh, excuse me. Withdraw the question. I then make this offer of proof: If I had been permitted to query the witness along these lines, it would have developed, or I would have been

enabled to develop that this witness had no knowledge of the amount of advertising done by Strawbridge & Clothier in the particular period referred to.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Do you know the number of promotional sales had by Strawbridge & Clothier during the period January 1, 1935, to June 30, 1935, in the departments of which you are now divisional manager? A. I don't understand your question as to promotional sales.

4061 Q. Do you mean to tell us that as a divisional merchandise manager you don't know what a promotional sale is? A. My opinion may be different than yours.

Q. Do you know what the term "promotional sales" means?

Mr. Haycraft: Objected to. There is no foundation laid for that.

A. Yes.

By Mr. Weisman.

Q. Did you get that information in the course of the performance of your duties as a person in charge of merchandising with Strawbridge & Clothier? A. It is a gen-

4062 eral term used in the business.

Q. And generally known to all who have dealings therein? A. Somewhat.

Q. Commonly known? A. Yes.

Q. Now, tell us what is meant by that commonly known term? A. My interpretation would be the purchasing of any amount of merchandise and promoting it for sales results.

Q. Yes. Well, that is, to—how do you differentiate from the ordinary purchases or ordinary transactions that you have in the store? A. It depends upon the amount of effort put behind an item.

Q. Tell us. We don't know anything about this and you do. Now, don't presume that we do know something. Tell us what you mean by the amount of effort put behind the item. A. Well, by an amount of effort——

Q. Speak up so we can all hear. A. By the amount of effort I mean advertising, selling effort placed behind it.

Q. What was that last? A. Selling effort. Display. Many things are taken into consideration.

Q. What do you mean by selling effort? A. By selling 4064
effort, that can be probably connected with advertising and display.

Q. You mean by that that stores holding promotional sales attempt to accelerate the sale of their merchandise by giving to the particular departments a greater amount of display space than they ordinarily have, a greater amount of advertising than their budget ordinarily carries, and generally pushing the department sales; isn't that so? A. I couldn't say that. That would depend upon the individuals.

Q. What do you do in your store when you want to promote the sales in a particular department as differentiated from your ordinary regular sale of merchandise?

Mr. Haycraft: That is objected to. No founda- 4065
tion was laid that he knows about any other store, or whether he ever put on any such promotional sales. You had better find out whether he ever put on any such promotional sale.

Examiner Bennett: I don't think there is any foundation for this at Strawbridge & Clothier. I don't think you have brought out that Strawbridge & Clothier has any promotional sales.

Mr. Weisman: All right. We will find out.

By Mr. Weisman.

Q. Have you ever, while you were connected with Strawbridge & Clothier, learned that Strawbridge & Clothier do engage in promotional sales?

Mr. Haycraft: That is objected to, unless it is confined to the time that he was divisional merchandise manager.

Mr. Weisman: Well, I am——

Mr. Haycraft: No. I am asking that he be restricted to that time.

Mr. Weisman: Exception.

4067 Examiner Bennett: There is a reason why I have been very liberal in this matter. This witness at your solicitation has made certain comparisons running back to the early part of 1935, as I remember. Now, those comparisons might be affected by this sort of cross-examination, and that is the reason that I am entertaining the cross-examination, and I am going to entertain it as long as it brings out facts that will help us.

Mr. Weisman: Thank you. May we have the question and the answer.

(Record read.)

Mr. Haycraft: I object to that unless it is confined to the period that the Examiner indicated. It should be restricted to beginning with January,
4068 1935.

Examiner Bennett: Of course, I expect you to to confine it to that time.

Mr. Weisman: All right.

Examiner Bennett: That this witness started.

Mr. Weisman: Yes.

Examiner Bennett: As I understand it, it was some time in 1935.

By Mr. Weisman.

Q. Do you know whether or not since January, 1935, in the dress departments, whether Strawbridge & Clothier have ever had any promotional sales? A. Yes, we have promotions in our departments from time to time.

Q. When you say you have such promotional sales in your departments from time to time, how frequently would you say that you have such promotional sales? A. I am not in a position to say.

Q. I want your best opinion. A. It would be a guess.

Q. I don't—what is your best guess? You are now divisional merchandise manager.

4070

Mr. Haycraft: I object to any guesses or opinions. I have no objection to the witness stating since he has been merchandise manager how many of those promotional sales they have had. If the question is restricted to that I am not objecting; otherwise, I do object.

Examiner Bennett: I will ask the witness to state what he knows about it.

The Witness: I can't judge. It is a question of carrying records around as to how many sales we have. If I stated one or ten, I may be wrong.

By Mr. Weisman:

Q. Let's see. Do I understand you to say that you have been divisional merchandise manager now for about six and a half months; isn't that so? A. That is right. 4071

Mr. Haycraft: That is objected to, as to the form of the question. I don't think we are interested in what counsel understands.

By Mr. Weisman.

Q. Didn't you testify that you were divisional merchandise manager for about six and a half months? A. I have.

Q. And isn't it a fact? A. Yes.

Q. Now, during those six and a half months, do I understand you to say in answer to the query given to you by the Court, that you don't know, and you couldn't say whether you had one promotional sale during that period in these departments, or ten promotional sales?

Mr. Haycraft: That is objected to as to the form. We aren't interested in what counsel for the respondent understands, and I don't think the Commission is interested in that.

Mr. Weisman: I think it is perfectly all right.

Examiner Bennett: I will let him answer.

4073 The Witness: That is a fact, Judge.

By Mr. Weisman.

Q. Well, how many did you have in the last six months? A. I don't know.

Q. Did you have fifty? A. I wouldn't guess.

Q. Weren't they made, if they were had, under your direction? A. They were made, but I have many departments, and I cannot remember.

Q. Well, let's see. Did you have any promotional sales in February, 1936? A. I don't remember.

Q. If you had them, wouldn't you be inclined to remember them?

Mr. Haycraft: That is objected to.

4074 The Witness: Anything unusual I might.

By Mr. Weisman.

Q. Isn't a promotional sale unusual? A. I don't recall any that were unusual that month.

Q. Well, now, let's go on. That month was February, was it, that we covered? A. I don't know.

Examiner Bennett: That was February.

Mr. Weisman: Yes.

By Mr. Weisman.

Q. Now, what about March? Did you have any promotional sales in March, 1936? A. I don't recall.

Q. You don't recall any? A. No.

Mr. Haycraft: He didn't say that, Mr. Examiner.

The Witness: I said I didn't recall.

Mr. Haycraft: He didn't say "any."

By Mr. Weisman.

Q. Do you recall any?

Mr. Haycraft: I object to that, Mr. Examiner. If he doesn't recall, he can't recall specifically. 4076

Mr. Weisman: Oh, I don't know why—why don't you take the stand and testify. It would be a lot easier for all concerned.

Mr. Haycraft: You are doing very well for all of us.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Do you recall a single promotional sale in March, 1936? A. I do not.

Q. Coming now to April, 1936, do you recall a single promotional sale that you had in April in any one of these departments? A. I cannot remember that—when our promotions were in any month since I have been divisional 4077 manager.

Q. Well, let's bring you down to May. That is only two and a half months ago.

Mr. Haycraft: I object to that. He has already testified——

Mr. Weisman: I want a specific denial of this man who testified with such glibness to the way the

good will was affected of this $50,000,000 institution, who doesn't remember whether 20 days ago they had a promotional sale.

By Mr. Weisman.

Q. Now, let's see. By the way, aren't these promotional sales also indulged in for the purpose of promoting good will, or don't you know that, either? A. I don't.

Q. Good. Notwithstanding that you think you are in a position to pass upon good will; do you? A. Depends on just what purpose one has in mind in promoting.

Q. I see. Now, in May, 1936—I will withdraw that.
4079 You already testified you didn't remember about May; isn't that so? A. I testified I do not know how many promotions.

Q. What about June, 1936? Did you have any promotional sales in June, 1936?

Mr. Haycraft: Same objection.

Examiner Bennett: Same ruling. He may answer.

The Witness: We had a store—wide, promotion, if that may be considered.

By Mr. Weisman.

Q. You had a store-wide promotion? A. It is an anniversary sale.

4080 Q. Did that store-wide promotion indulged in in June, 1936, extend to the departments which came under your supervision and direction? A. Yes.

Q. So that you do remember in June, 1936, you did have a promotional sale? A. It is considered a store-wide sale and not a promotional sale of dresses, particularly.

Q. Well, in that store-wide sale, do you, as divisional merchandise manager, have a promotional sale in your dress departments? A. We take part in the store-wide sale.

By Mr. Weisman.

Q. Do you know of any facts upon which you can base a comparison of the number of promotional sales had in these dress departments during the period February 1, 1935, to June 30, 1935, as compared to the period February 1, 1936, to June 30, 1936?

The Witness: What is that question?

Q. (Question read.) A. Do I understand that to mean strictly promotional sales?

Q. Yes. A. I have none.

Q. Well, don't you know that promotional sales due accelerate the volume done in the departments? Don't you know that? A. You are telling me. 4082

Q. Well, do you know it? A. It depends upon the type of promotion and the effort placed behind it.

Q. Isn't the purpose of a promotional sale in a department for the purpose of increasing the sales in that department? A. It could mean almost anything.

Q. Well, no. What does it mean when you do it? Is that your purpose? A. No, it may have—it may have several meanings, so far as I am concerned, in promoting.

Q. Now, we would like to find out the several meanings that it would have so far as you are concerned. What are the several meanings? A. Well, we may want to promote a style——

Q. Not what "we may want." I want to know the purpose of your promotional sales, not what they might be, but what they are, or have been for. A. I may want to promote a specific style, I may want to promote a specific price line; I may want to promote a fashion item. It has many significances in the way of promotion. 4083

Q. Now, what is the purpose of seeking to promote these things? Is it not to accelerate the sale of them? A. There is no way that we can measure what the response is to any promotion.

Q. I don't ask you what the response is. I ask you what the purpose is. Are you trying to tell—I will withdraw that. Are you trying to tell us that a promotional sale is not for the purpose of increasing the sales volume? A. You are speaking of a definite time?

Q. I am speaking of what you do? A. At what time?

Q. At any time. A. The results in promotions are generally hoped to be sales.

Q. I am not asking you for the results. I am asking you for the purposes. A. They are the purpose we hope for them to give us sales.

Q. In other words, you indulge in promotional sales for
4085 the purpose of increasing your sales? A. We hope that they will.

Q. Isn't that so? Yes. And when you say you hope, that is your expression of purpose; isn't that so? A. Yes.

Q. What was the volume of your advertising in these departments during the period February 1, 1936, to June 30, 1936? A. I do not know.

Q. Did you ever seek to ascertain? A. I may have seen the figures.

Q. Do you have any recollection of them, if you have seen them? A. No, sir.

Q. Did you ever see the figures of the advertising done in the departments during the period February 1, 1935 to June 30, 1935? A. I may not have seen that particular figure.

4086 Q. I don't ask you what may or may not. I ask you: Do you have any recollection of ever having seen them? A. I do not have any recollection.

Q. Did you ever compare the amount of advertising done in these departments now under your supervision during the period February 1, 1935, to June 30, 1935, with the period February 1, 1936, to June 30, 1936? A. May I have that question, please?

Q. (Question read.) A. No, I have not seen that relation.

Q. Now, don't you know as divisional merchandise manager that the purpose is of advertising? A. The purpose of advertising is to sell our customers, or the public, or offer for sale that which we have to offer.

Q. Why do you do that—is there any help being given to you over in this corner (indicating)? A. Do you see any?

Q. Why do you constantly look over there? A. I am looking all over the room.

Q. Well, please look at me; won't you try? A. I will try, yes.

Examiner Bennett: Please don't make that sort of reflection on the witness. 4088

Mr. Weisman: Well, it has happened about ten times.

Mr. Haycraft: There is nothing to it at all.

Examiner Bennett: I wish you would refrain from that sort of reflection on the witness.

By Mr. Weisman:

Q. Will you answer the question? A. May I have the question, please?

Q. (Question read.) A. We hope to increase sales.

Q. You hope to increase sales. And haven't you found in your experience as a divisional merchandise manager that a larger amount of advertising is prone to increase the volume done in particular departments? A. Not always. 4089

Q. Not always, but I want to know what it does generally. A. I coulda't testify as to what it does generally.

Q. Well, do you mean to say that you don't know that the purpose of your advertising is to increase your sales? A. I do.

Q. Well, then, why don't you say so when I ask you?

Examiner Bennett: He spoke of the departments. You are asking him now exactly a question that even a technical advertising man wouldn't answer with any confidence.

Mr. Weisman: I don't know. I know some that would.

Examiner Bennett: You haven't qualified him.

By Mr. Weisman.

Q. To clear up the record, isn't it part of a merchandise manager's business to know the relation between advertising and sales? Isn't that part of your job? A. Yes.

4091 Q. Don't you know, as a part of that job, that in this business of merchandising dress departments, there is a generally accepted ratio between sales and advertising? A. Yes.

Q. Don't you know that the amount of advertising is generally supposed to reflect itself in the amount of sales? A. You say generally, but that is not a true fact.

Q. What do you mean by that? I want your help. A. I mean this: that a buyer sometime or other may promote merchandise which the public does not wish to accept.

Q. Yes. That is sometimes. But I am speaking about generally without the specific exceptions. I know that you might advertise a cat or something that isn't wanted, but I am speaking of the ordinary run of garden variety

4092 type of advertising and merchandising. Doesn't it in the increased volume of advertising, generally, tend to increase your sales? A. There is a question there as to whether it will or not.

Q. Why do you do any advertising if there is such a question. A. We advertise hoping that results will be obtainable or obtained.

Q. Don't you advertise because you believe the more you advertise the more you are likely to sell in the advertised

departments? A. My belief and my thoughts on that could be different than any one else's.

Q. Well, are they different from everybody else's? A. Sometimes in some instances.

Q. Well, on that particular question that I asked you, are your thoughts different from everybody else's? A. May I have the question?

Q. (Question read.) A. I have had differences of opinion.

Q. I didn't ask you that. I want to know whether you, as divisional merchandise manager of Strawbridge & Clothier, are of the opinion that the amount of your advertising bears no relation to the volume of your sales? 4094
Now, do you understand that question? A. I didn't say that it does.

Q. Well, now, I am asking you that. Does it bear some relation to the volume of your sales? A. There is a relation between those figures.

Q. Of course. And anybody knows that, don't they, in the merchandising business? A. I don't know whether they do or not.

Q. Well, is it generally known in the business? A. I couldn't answer.

Mr. Haycraft: That is objected to.

By Mr. Weisman.

Q. Well, don't you meet other buyers and other mer- 4095
chandise men? A. I do.

Q. And from them don't you know that this is a thought that is generally held by the people in the industry? A. I am—I never discuss that with any other manager.

Q. You never discussed that. Did you ever hear of the N.R.D.G.A.? A. I have.

Q. What is it? A. I don't know.

Q. You don't know? A. No. It is an association, in my estimation. I may not be given the complete——

Q. Isn't it the National Retail Dry Goods Association? A. Yes.

Q. And isn't your store a member of it? A. Yes.

Q. Why did you say a moment ago that you didn't know what it was? A. Well, you are asking me what it was and I am telling you that that is my——

Q. Now, don't they give you—do you receive monthly reports from them showing the relation generally throughout the country between advertising and volume of sales? A. I have never seen any such reports.

Q. You haven't seen them? A. No, sir.

Q. Did you ever see them from the A.M.C.—I will withdraw that. Do you know what the A.M.C. ? A. Yes, I
4097 do.

Q. What is the A.M.C.? A. The A.M.C. is a group of stores associated for various exchanges of information.

Q. And various co-operative action? A. I can't attest to that.

Q. Group buying? A. I don't know.

Q. Did you ever buy merchandise through A.M.C. with others? A. I have not personally.

Q. Have you ever known whether any was bought for your store? A. I don't know.

Q. Did you ever learn that your store, acting with others, had shipped—using Mr. Tily's term—money, had shipped money into a common pot for the purpose of getting some merchandise and they shipped that money
4098 into the A.M.C.? A. I happened to hear Mr. Tily's testimony.

Q. Is that the first you heard of it? A. That is the first I heard of that fact.

Q. Notwithstanding the fact that you are the divisional merchandise manager of all these departments, you never heard that that was done; is that so? A. That is right.

Q. That is the kind of divisional merchandise manager you are; is that right?

Mr. Hayeraft: That is objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. During the period, February 1, 1936, to June, 1936, how much display space in the windows of Strawbridge & Clothier did your departments receive? A. I do not know.

Q. What? A. I do not know.

Q. Isn't your business to foster sales and to see that they should be increased and augmented? A. Now you are asking me a question.

Q. No. Is that your business? A. Yes. 4100

Q. Isn't it the purpose of the display of merchandise to aid in the sale and to foster the sale thereof? A. Yes.

Q. And notwithstanding that would you have us believe that since you have become divisional merchandise manager of these departments, you don't know how much display space your departments have obtained?

Examiner Bennett: If you can make an answer to it.

The Witness: I cannot answer that, Judge. I cannot answer it.

By Mr. Weisman.

Q. You cannot answer because you do not know? A. I do not know right at this moment. 4101

Q. You do not know at this moment? A. No.

Q. But you might have known at some other time? A. Yes.

Q. Did you know at any time how much display space these departments obtained in the period February 1, 1935, to June 30, 1935? A. I have seen the figures.

Q. You have seen the figures? A. Yes.

Q. Do you have the figures of the amount of the display space allocated to these departments? A. Figures are submitted to us, whether those figures check in that particular period I am not certain.

Q. You were at the head of the merchandising during the period I have asked you about—you were in charge as merchandise manager, and you— A. I beg your pardon?

Q. Let me ask you this first: You were, during the period I have just asked you about, you were in charge of the basement and how would you see the figures covering all of the other departments covered by that period of
4103 time? A. I believe you are wrong. I was not in charge of the basement.

Q. During the period that I have just asked you about you say you were not in charge of the basement, and that as such you would not see the figures covering all of the other departments covering that period? A. I have just said that I was not in charge of the basement.

Q. Were you not in charge of the basement in 1935? A. I have not said so.

Q. What? A. I have not said that.

Q. You have not said that? A. No.

Q. Did you testify that you became merchandise manager February 1, 1936? A. That is right.

Q. And before that what were you in charge of? A. Department 492 and——
4104

Q. Yes. A. —and 493.

Q. Departments 492 and 493? A. Yes.

Q. What were Departments 492 and 493? A. Generally known as the house dress department.

Q. All right. Then, excuse me. Were those located other than in the basement? A. Yes.

Q. Where are the departments located? A. Departments 492 and 493 are located on the third floor of Strawbridge & Clothier's.

Q. During that period you were in charge of this particular department? A. Yes, sir.

Q. How did you come to see the figures for all departments? A. I happened to review them with Mr. Taylor.

Q. What? A. I happened to review them with Mr. Taylor.

Q. When did you happen to review them with Mr. Taylor? A. I do not remember the particular day or date.

Q. How long ago? A. I do not recall.

Q. Was it done this year? A. No, it was prior to my taking over the position.

Q. (Question read as follows: "Q. In other words, prior to your taking over the divisional merchandise man- 4106
agership of all of these departments, you now state that you reviewed the figures showing the amount of display space given to all of these departments during the period February 1, 1935, to June 30, 1935?") A. Well——

By Mr. Weisman:

Q. Is that so? A. Yes, sir.

Q. What was the occasion for examining those figures? A. The examining of the figures was simply a matter that Mr. Taylor wanted to show me those figures.

Q. Did you ask him why he wanted to show you them? A. No.

Q. What happened? Mr. Taylor came in and said "Here are these figures"? A. No. Mr. Taylor would very 4107
often show me quite a few things.

Q. No. I want to know the occasion for his showing you these particular figures? A. There was no occasion. It was simply a matter of his showing them to me.

Q. Did he direct your attention to any particular matter generally in these figures? A. Not that I remember.

Q. Did you ask him why he showed them to you? A. No. I did not ask him.

Q. Did you make any copy of the figures? A. Sure.

Q. Sure? A. Sure.

Q. Do you know whether or not the paper he showed you is still in existence? A. I cannot answer that.

Q. Do you know when Mr. Taylor got those figures? A. I do not.

Q. Do you know where Mr. Taylor got those figures? A. No; I do not know that either.

Q. Did you ever ask him? A. No.

Q. No? A. No.

Q. What is your best recollection as to what those figures disclose? A. I have no recollection.

4109 Q. You have not? A. No.

Q. When did—I withdraw that—what is your personal recollection of when you first forgot?

Mr. Haycraft: I object.

Mr. Weisman: I think it is a fair question. I want to know when he forgot this. Maybe he forgot it just about ten seconds ago.

Mr. Haycraft: I object. It is utterly ridiculous and improper in every way possible.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Do you know what was the relative amount of dis-
4110 play space allocated or given to these departments during the period February 1, 1935, to June 30, 1935, as against February 1, 1936, to June 30, 1936? A. I do not.

Q. You do not? A. No.

Q. Do you not know what the amount of display space given to these departments was, or would be, likely in some measure to be reflected in the volume of sales? A. Yes, it would.

Q. There is no question about that, is there? A. There is a question about it.

Q. There is a question about it? A. Yes, sir. It is a matter of opinion.

Q. What is your opinion? A. My opinion is that as far as its effect on sales was concerning—display space would have an effect on sales.

Q. State that again, so I can understand it. A. My opinion is that as far as it is concerned it does affect sales, display space does affect the sales.

Q. Now, tell me, do you not—I withdraw that question—as divisional merchandise manager, is it not your opinion that the volume of sales done in the dress department 4112
—I withdraw that question—I will not withdraw it—as affects—as it affects to some degree? A. I do not understand what you are talking about, I am sorry.

Q. I will restate it all over again. Now, tell me if you do not know, as divisional merchandise manager, whether or not it is a fact, in your opinion, that the volume of sales done in the dress department is affected to some degree by the mark-up which the store operates those departments upon? A. To some degree, yes, sir.

Q. In other words, all of the things I have called your attention to and that I have queried you about do, in some degree, affect the volume of sales? A. It depends on how intelligently it is done.

Q. Yes. A. Yes.

Q. If a poor job is done it has an adverse effect? A. 4113
Yes.

Q. Now, mark-up is a very important factor in the retail merchandising business, is it? A. That depends also, it is a matter of opinion.

Q. What is that that you say? A. That depends, it is a matter of opinion. Some people differ on that one opinion.

Q. I do not care what other people think about it. Do you not know as general merchandise manager and do you not concede as general merchandising manager—or rather as divisional merchandise manager, do you not concede that the matter of mark-up is very important in the merchandising of your departments? A. No. I would not concede that.

Q. Do you think that mark-up is unimportant? A. It is one phase of the business that has to be considered.

Q. Let us see. What do you think Strawbridge & Clothier are in business for? A. To make a profit.

Q. To make a profit. There can be no question about
4115 that, is there? A. That is right.

Q. You have not the slightest doubt but that they are in business to make a profit? A. That is correct.

Q. Now, is their profit in a large measure dependent on their mark-up? A. I do not know whether it is or not.

Q. Do you not know what the mark-up is—you said you were divisional merchandise manager of all of the departments? A. I know what mark-up is.

Q. What is mark-up? A. Mark-up is the difference between the cost and the selling price of merchandise.

Q. It is a fact—I withdraw that question—does the cost—difference between the cost of your merchandise and the selling price contribute in the largest degree to the profit factor of your business? A. I do not know whether it does
4116 or not.

Q. If you do not have any mark-up, can you tell us how there can be any profit? A. I do not say that we did not have any mark-up.

Q. I did not say that you did. A. No?

Q. I am asking you if mark-up is not one of the most important factors in your profit schedule. A. I will not say that it is. I do not know.

Q. Where can you make a profit in your business other than from mark-up? That is what I want to find out at

the moment. A. I do not know. I am not managing the business.

Q. I do not care whether you are managing the business or not. You are divisional merchandise manager, are you not? A. Yes, sir.

Q. That means you are manager of the division comprising the numbers of these departments that we have referred to here; is that so? A. Yes.

Q. That means that it is your duty within the realm or boundaries of proper ethical handling of your business to show a profit in these departments, is that so? A. Yes, sir.

Q. Are you able to tell us where your profits can come from in these departments except from the difference between the cost of the merchandise and the selling price; tell us that. A. Must I answer that question, Judge? 4118

Examiner Bennett: Well, I do not know. Can you answer it?

A. Those are business secrets and I would not answer that until I could speak to my counsel.

By Mr. Weisman.

Q. Do you mean that you have means of making profits other than through the difference between the purchase price and the sales price? A. I did not say that.

Q. I am asking you a very simple question. A. Well—— 4119

Q. I am asking you in these departments where you can make a profit other than through the difference between the cost of merchandise and the selling price.

The Witness: I cannot answer that, Judge, without consulting our counsel.

By Mr. Weisman.

Q. Why can you not answer it?

Mr. Weisman: I ask that the witness be directed to answer it.

By Mr. Weisman.

Q. You do not mean that you steal merchandise, do you?

Mr. Haycraft: I object to that.

Examiner Bennett: I am not going to insist on that because I do not see what difference it makes.

4121 If you are testing this witness as to his knowledge you have it in the record.

Mr. Weisman: Your Honor, I am going to prove in this case, and I hope to make a statement, I would like to make it privately to your Honor and in Mr. Haycraft's presence. This is not a matter of defense. This is a matter of cross-examination of this witness.

Examiner Bennett: We will take a short recess.

(There was a short recess taken.)

Examiner Bennett: You may proceed.

By Mr. Weisman.

Q. I understand you have refused to answer my question which was: That Strawbridge & Clothier in these depart-

4122 ments makes a profit where other than by the difference between the cost of the merchandise and the selling price: is that so? A. That is right.

Q. And am I to understand that you persist in that refusal? A. That is right.

Mr. Weisman: I now move to strike out all of this witness' testimony which went to the effect, or the alleged effect of the Guild program upon the sales volume of Strawbridge & Clothier.

Mr. Haycraft: Those figures are in exhibits in evidence, in testimony and evidence also. He testified as to the good will orally.

Examiner Bennett: The motion is denied.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Do you know what is the mark-up, the percentage of mark-up over cost in these particular departments during this period? A. Which period are you referring to?

Q. The latter period, namely, February 1, 1936, to June 30, 1936. A. I do not remember that.

Q. You do not remember that? A. No. 4124

Q. Did you say that? A. No.

Q. Did you ever know it? A. I have seen them.

Q. Do you not know that when you bring in merchandise to these departments what it cost, or what they cost? Not only that, but what your cost is and the price which you sell it at? A. I know what the average market price is, and I know what the average mark-up is.

Q. What is the average mark-up? A. I know what the average mark-up is.

Q. Is that what you mean to say; you know what the average mark-up is? A Yes.

Q. What is the average mark-up? A. At the time I had those in front of me on which they were shows, the papers, but I do not remember them now. 4125

Q. Do you mean, as divisional merchandising manager of these departments, you do not know what your mark-up is in these departments?

Mr. Haycraft: I think that is an unfair question. The witness said that he did not know now, but at the time he did.

By Mr. Weisman.

Q. Well, you are divisional merchandise manager now, are you? A. Yes.

Mr. Haycraft: I object to this question, anyhow. It has no connection with this case which we are now concerned with. Furthermore, the witness stated that he did not know now what it was, that he could not keep these things in his mind.

Mr. Weisman: This is becoming an absurdity. I do not desire to call upon the Examiner to direct counsel for the Commission not to make an objec-
4127 tion in which he incorporates long stump speeches to the witness and suggests to him the possible way out of his dilemma. If counsel has a proper objection to make upon legal grounds, or factual grounds, I think he should make them, but I do not think we should have these long speeches to the witness. How long are we going to have to tolerate conduct of that character on the part of Commission's counsel?

Examiner Bennett: You may proceed.

Mr. Weisman: I will have to start all over again. I will have to start and frame my question all over again.

Examiner Bennett: All right. Go ahead.

4128 *By Mr. Weisman.*

Q. What is your percentage of mark-ups during the—or what was your percentage of mark-up during the month of June, 1936, in Department No. 331?

Mr. Haycraft: That is objected to as the witness has already said that he did not recall, that he knew at the time but he does not recall now. I object to any further examination upon that as useless.

Examiner Bennett: I will let him answer, himself, if he can answer.

The Witness: I do not remember, Judge.

By Mr. Weisman.

Q. You mean you do not remember your mark-up in this department in the month of June, 1936? A. That is right.

Q. What was your mark-up during that period in Department No. 350? A. I do not remember.

Q. Did you know it? A. I have seen it.

Q. What was your mark-up during that period in Department No. 338? A. I do not remember.

Q. Did you know it? A. I did, yes. 4130

Q. What was your mark-up in Department 371? A. I do not remember.

Q. Did you know it? A. Yes.

Q. What was your mark-up in June, 1936, in Department 373? A. I do not remember.

Q. Did you know it? A. I do not remember whether I did or not.

Q. Did you ever know it at one time or another? A. I did.

Q. Have you got any way of fixing this mark-up that concerns you; do you have any hand in the fixing of this mark-up? A. Having a hand in fixing it does not always give you the mark-up after it is done.

Q. No. Answer my question: Did you have a hand in 4131 fixing this mark-up? A. Not necessarily.

Q. I do not care whether it was necessarily or unnecessarily, I want to know if at the present time if you had any hand in the fixing of the mark-up in these departments? A. I did have a hand in the fixing of the mark-ups in these departments.

Q. Notwithstanding the fact that as recently as 30 days or 35 days ago, you had a hand in fixing the mark-up in

these departments you say that to-day you do not recall what said mark-up was, or what such mark-up was? A. Yes.

Q. Is that correct? A. Yes, that is right, I do not know.

Q. Will you give us, or are you giving us an honest answer, or are you seeking, in order to evade answering the question, to hide under the cover of assumed ignorance?

Mr. Haycraft: I object.

The Witness: I am under oath.

Examiner Bennett: Sustained.

4133 Mr. Weisman: Exception.

By Mr. Weisman.

Q. Did you ever know the mark-up—I withdraw that—no, I will stand by it: Do you know the mark-up—that is, the price mark-up, in these departments? A. What is that?

Q. I have asked you this: do you know the price mark-up in these departments that I have mentioned? A. I do not. I do not know what it is.

Q. At any time? A. Well, I could not say.

Q. I will get at it this way: Do you know the mark-up, that is to say, the present mark-up in these departments? A. No.

Q. I want to ask you that again so there will not be any
4134 doubt about it: Do you know the present mark-up in these departments that I have enumerated a few moments ago by number? A. I do not know it in any of them.

Q. You do not know the mark-up in these departments that you are charged with to-day? A. That is right. I do not.

Q. Is that something that you have also forgotten? A. I do not know.

Q. Did you ever know? A. No.

Q. You mean that to-day you are the divisional merchandising manager operating that department, and you do not know the mark-up upon which they are being operated; those several departments? A. That is right.

Q. What are your duties as divisional manager, what do you understand your duties as divisional manager to be? A. I am responsible for the dress department in the way of sales and profit.

Q. How can you be responsible for profits and sales if you do not know the relation between the cost of your merchandise and its sale price? A. I am not expected to know that.

Q. You are not expected to bring in profits without 4136
knowing that, are you? A. I do not understand.

Q. You mean you are expected to bring in profits yet you tell me that you do not know what the merchandise costs in relation to what you sell it for? A. I am expected to remember that but not in detail. I only know it in the broad scope of it. I am not expected to remember that in detail.

Q. You mean you are not expected to remember what it is? A. No.

Q. Yet you are expected to bring in profits, yet you tell me, and let us get this perfectly clear, that you, as divisional merchandise manager, do not know what the merchandise costs in relation to what you sell it for? A. I am not expected to remember any detail, I repeat.

4137

Mr. Hayeraft: He has answered that once.

By Mr. Weisman.

Q. Have you got a fixed policy in that regard? A. No.

Q. If you purchase a dress or a lot of dresses for $10.75 per garment, have you a fixed policy as to what you are going to mark those dresses up for? A. No, we have not.

Q. Do you have a general policy in that regard? A. I do not know the exact policy in that regard.

Q. I did not say exact policy. Do you have a general policy? A. We have got——

Q. What? A. We have not a general arrangement for the handling of the business of the organization.

Q. That is not an answer to my question. Can you answer that question or can you not answer that question? A. That question cannot be answered.

Q. That question cannot be answered? A. It cannot.

Q. What do you usually mark them up to? A. That question cannot be answered, either.

Q. You mean you cannot tell us what you usually mark them up? A. No, that cannot be answered.

4139 Q. Well, let us see whether it can or not. You buy—take a specific instance: You bought a lot of dresses from Lipman Brothers, did you? A. Yes, sir.

Q. What did you pay for them? A. $12.75 each.

Q. When did you buy them? A. I did not buy them.

Q. When did your department buy them? A. What is that?

Q. When did your department buy them? A. Some time in January.

Q. Now, you remember that clearly; that some time in January you purchased this merchandise for $12.75 per unit? A. Yes.

Q. What was the sales price which they were marketed at? A. I do not remember.

Q. No? A. No, I do not remember.

4140 Q. Do you not recollect that they were sold at $19.75? A. I would not know because at that time Mr. Taylor was in charge of that division.

Q. Mr. Taylor: I thought you said you had charge of that from February 1, 1936. A. Yes. I said that we purchased these in January.

Q. When were they sold, that is what we are talking about? A. Later on.

Q. When those were sold you spoke about some reorders; when were they sold? A. I do not know. I could not attest to that.

Q. You said that this merchandise that you bought from Lipman Brothers was a very popular number; is that so? A. Yes.

Q. You remember it because of its popularity? A. Yes, that number was.

Q. And can you tell me—first, you had a long statement as to why it was popular and the reasons that gave it popularity? A. Yes, I remember.

Q. You remembered all of those things? A. Yes, sir.

Q. Notwithstanding that, you cannot remember what they sold for? A. I cannot remember what it was sold for. 4142

Q. You cannot remember what it was sold for? A. No.

Q. What is your best opinion?

Mr. Haycraft: I object to that.

A. I would not make an opinion on it.

Mr. Weisman: I submit we should have an opinion for it to test the witness' credibility.

Examiner Bennett: I do not think it is a matter of opinion. It is a fact, and if he does not know the fact, he does not know.

Mr. Weisman: Exception.

By Mr. Weisman. 4143

Q. Now, do you know the relative mark-up—I withdraw that. As divisional merchandise manager, is it part of your duties to maintain the general mark-up in each particular department? A. We have.

Q. No. Is it part of your duties to maintain a general mark-up? A. Yes.

Q. That is one of your duties, you say? A. Yes.

Q. Will you please explain to us how you can maintain that particular mark-up if you do not know the cost price or the selling price in its relation— A. I——

Mr. Haycraft: I object. The question is not intelligible.

Mr. Weisman: I will withdraw it, and I will restate the question.

By Mr. Weisman.

Q. Will you please explain to us how you can maintain a general mark-up if you do not know the cost price or the selling price in its relation to the selling price; if you do
4145 not know the cost price in its relation to the selling price? A. No one particular cost price or retail price will affect the mark-up; mark-up is affected by competition.

By Mr. Weisman.

Q. Is that the best answer you can give to that question? A. It is.

Q. And you say that no one particular cost price, or retail price, will affect the mark-up; mark-up is reflected by competition, is it? A. It is.

Q. When you say mark-up is affected by competition, you mean if you mark your merchandise at a certain price in relation to its cost, and your competitor marks it at a lesser price in relation to its cost, then your competition
4146 makes you bring down your mark-up; is that what you mean? A. That makes us bring down the selling price of that garment.

Q. I want to know before such a force commences to operate, what the relation between your cost and your selling price generally in department, say, No. 331, was? A. That question cannot be answered.

Q. Well, I want to know from you how it is possible for you to be responsible for the profits from Department No. 331 when you do not know your maintained general mark-up; explain that to me. A. Well, knowing the maintained general mark-up is not going to aid you on that.

Q. I do not care whether it gives you any aid or not, but I want to know how it is possible for you to be responsible for profits from Department No. 331 when you do not know your maintained general mark-up? A. I do not know it.

Q. You do not know it? A. I do not know.

Q. Have you got a particular policy in your department with reference to, or with regard to your mark-up? A. 4148
I do not quite understand your question—"the policy." What policy do you refer to?

Q. You do not seem to understand very much. A. No?

Q. Give me Mr. Taylor's testimony, or my notes on it; what is your Department No. 491? A. Well, Department No. 491 is known as the "Economy Dress Department."

Q. What prices do you maintain in that department, generally? A. Merchandise retailing at $6.95, at various times of the year that price may change.

Q. Now, without going beyond $6.95 one way or the other, but taking this thing generally, on that particular situation, and in that particular department, without getting $6.95 on each and every particular dress when you have a sale—in other words, eliminating the sale feature from it, what is your average price? A. I do not under- 4149
stand that question, I am afraid. In the first place, I do not understand what you mean by "average price."

Q. What is your general price in that department, that is what I am trying to get. A. What period do you refer to? What period? What period?

Q. General price. A. I do not know what the average price is for that department.

Q. What is your most prevalent price in that department? A. The price that we sell most merchandise is at $6.95 retail.

Q. $6.95 retail? A. Yes.

Q. Are you certain of that? A. Yes.

Q. You are? A. Yes.

Q. Do you want to change your mind about it now? A. No.

Q. You think you can stick to that? A. Yes.

Q. Would you change your opinion if I told you that Mr. Taylor, to the best of my recollection, testified that in the Economy Dress Shop you sold your merchandise at an

4151 average price of $12.95 per garment?

Mr. Haycraft: I do not recall that testimony about $12.95 per garment.

Mr. Weisman: I think Mr. Taylor does because he is smiling in acquiescence to it, and there is no dark frown of denial.

A. I would not change my opinion. It is my opinion you are asking for and you are not getting it; not Mr. Taylor's. You will have to ask him for his.

By Mr. Weisman.

Q. You say that the average sales price in that department on your dresses is $6.95? A. No.

4152 Mr. Haycraft: I object. It is merely repetition and quite useless.

By Mr. Weisman.

Q. No, it is not. Just tell me what that is?

Examiner Bennett: Overruled.

A. $6.95 is the price we feature in that department.

Q. $6.95? A. Yes.

Q. What do you pay for the merchandise generally that you feature at $6.95? A. It is from the $4.75 cost market.

Q. It is from the $4.75 cost market? A. Yes.

Q. When I asked you what is the cost of your merchandise, you cast your eyes up at the ceiling and figured it mentally to ascertain that, did you? A. No.

Q. No? A. No.

Q. How did you arrive at the $4.75? A. Because I know that that is the market that that particular buyer works in to obtain that merchandise.

Q. Now, do you not know what your market mark-up is in that department; do you not? A. I do not know. I have not figured.

4154

Q. You know that your average cost is $4.75, generally, and that your average sale price is $6.75 at retail? A. If you ask me for a comparison of the percentages I cannot give it to you; I would not be able to tell you that because I have not figured it up.

Q. Is that the difference between those two; the cost price and the selling price; your mark-up? A. Yes.

Q. Then, the difference between what you pay for the merchandise and what you sell it for represents your mark-up? A. It does.

Q. What is your average selling price in Department 350? A. I could not answer that.

Q. Why could you not answer that? A. There are so many prices of garments that are carried in that department, I would not know.

4155

Q. What are the price ranges in that department? A. From $19.75 and up.

Q. $19.75 what? A. Retail.

Q. Retail? A. Retail.

Q. Up to what? A. Oh, it can go up to $100 or $125.

Q. Are you sure you go as high as $100 and $125 for a single garment? A. Yes.

By Mr. Weisman.

Q. Do you know what was the average mark-up in these various departments under your supervision—now, under your supervision, during the time that they were under Mr. Taylor's supervision? A. I do not.

Q. Do you know whether or not the mark-up in these various departments during the period February 1, 1935, to June 30, 1935, was greater than or lesser than the mark-up in these departments during the period February 1, 1936, to June 30, 1936? A. I do not remember.

Q. What? A. I do not remember.

Q. You have no knowledge? A. No.

4157 Q. No? A. No, indeed.

Q. Do you know that such ratio of mark-up may, in some large degree, contribute to the volume of sales during those particular periods up or down? A. It might.

Q. Does it not, in general, Mr. Chance? A. You said it might.

Q. What do you say? A. It might.

Q. Does it not in general? A. Yes.

Q. In other words, where your mark-up is lesser, your volume has a better chance of being larger; is that so? A. Yes.

Q. When your mark-up is lower than ordinarily, your volume will go up ordinarily? A. Yes.

Q. Notwithstanding that, you made no comparison be-
4158 tween your general mark-up during those two respective periods in these various departments? A. I——.

Mr. Haycraft: He did not say so. I object to misquoting the witness in that manner.

Mr. Weisman: Oh, to save time I will withdraw it. We have got to get somewhere some time.

By Mr. Weisman.

Q. Did you at any time compare your mark-up, the mark-up obtained in these departments during the periods Feb-

ruary 1, 1936, to June 30, 1936, with the mark-up that was obtained in these departments during the period February 1, 1935, to June 30, 1935? A. I have reviewed the figures before.

Q. As a result of that review, how did they compare? A. I do not remember.

Q. You do not remember? A. No.

Q. How did you review them? What did you say? What did you do? What did you see? A. I reviewed them by actual figures submitted by our statistical department.

Q. You have such figures? A. What?

Q. You have such figures? A. Yes.

Q. Those figures are in the files of Strawbridge & Clothier? A. They are. 4160

Q. And are they there now? A. What is that?

Q. And they are there now? A. I think so.

Q. You think so? A. Yes.

Q. Were they at all times during this hearing there? A. I think they were, yes.

Q. Now, some of these departments—now, I withdraw that. As divisional merchandise manager would you say that the service rendered in a high-class dress department in some measure contributes to the volume of sales? A. Yes.

Q. Now, the service that is rendered in these departments consists of a number of sales people employed; is that so; among one of many other things; is that correct? A. Yes. It is one among many others. 4161

Q. The type and experience of the buyers? A. Yes.

Q. The comforts that are offered or conferred on prospective customers; is that so? A. It has a reflection in the sales; comforts.

Q. Yes. A. Yes, it has a reflection.

Q. Up or down? A. Accordingly.

Q. And the ability of your so-called—the experience of your so-called fitters and tailors; is that so? A. Yes, sir.

Q. That would most likely be the case in the women's better dress department, would it not; that is, No. 331? A. It would be the case in all of our departments.

Q. In all of your departments? A. Yes, sir.

Q. Let us commence with No. 331.

Mr. Weisman: That seems to have been the favorite with Mr. Haycraft and I will take it for that reason.

Mr. Haycraft: No. No. 350 is my favorite.

By Mr. Weisman.

4163 Q. Well, we will withdraw that and come to 350. I am anxious to please Mr. Haycraft in that regard. Now, in No. 351, first, how many sales people do you have there, and did you have there during the period February 1, 1936, to June 30, 1936? A. I do not remember.

Q. Did you ever know? A. We never had such a department.

Q. You never had what? A. You said 350. Then you said No. 351. You were addressing your remarks to No. 351. You said 351? We never had such a department as No. 351.

Mr. Haycraft: I said 350. I did not say 351.

By Mr. Weisman.

4164 Q. Well, I mean 350. If I said something else please do not fence with me. You understood what I meant. A. No. You could have meant No. 58.

Q. No, I said— A. You said No. 351.

Q. Did I? A. Yes, you did.

Q. Then, addressing yourself to department No. 350, how many sales people did you have in your department by that number during that period? A. I do not know. There would be an average——

Q. You say you do not know? A. Yes.

Q. You do not know? A. I do not know.

Q. Did you ever seek to find out? A. I know from day to day.

Q. How many did you have to-day? A. I do not know to-day.

Q. You said you knew from day to day; how many did you have yesterday? A. What?

Q. How many did you have yesterday? A. I do not know.

Q. What did you mean when you said you knew from day to day? A. I know from day to day at the end of the day, but as far as remembering all of that, I cannot remember that.

4166

Q. Did you know yesterday at the end of the day? A. I did not know yesterday.

Q. You did not know yesterday? A. No.

Q. You said you knew from day to day at the end of the day; why do you not know what it was yesterday? A. Well, we are taking in a period from February 1 to the end of June. We are speaking of that period.

Q. How many sales people did you have in that department yesterday? A. I do not know.

Q. No? A. No, I do not.

Q. How many sales people did you have in that department during the month of June, 1936? A. The figure varies from day to day and from time to time; I do not remember how many people that would be, the average number daily.

4167

Q. Did you know how many people, and do you know how many people were employed as sales people in that department during the period June, 1935? A. No.

Q. Did Mr. Taylor ever show you a little piece of paper with that on it? A. I do not know.

Q. You do not know? A. No.

Q. Did he or didn't he? A. I do not think so.

Q. Are you certain you never saw any record as to that? A. I never saw any record as to the number of people employed in there.

Q. That is not what I asked you. A. No.

Q. The answer is "no"? A. The answer is "no."

Q. You never had any knowledge as to the number of people employed there during the month of June, 1935? A. That is right.

Q. Did he ever show you a paper with the number of people thereon employed or therein employed thereon noted during the month of May, 1935? A. No.

Q. Did you ever see that? A. No.

4169 Q. Now, what about the month of April, 1935? A. I do not know.

Q. No? A. No.

Q. What about the month of March, 1935? A. I do not know.

Q. You do not? A. No.

Q. What about the month of February, 1935? A. I do not know.

Q. So you do not know how or what relation the sales force of your department, 350, during the period of February 1, 1935, to June 30, 1935, how that compared in relation to the same period during 1936? A. I do not know the number of people.

Q. Notwithstanding you do not know that relationship of the number of people employed in that department dur-
4170 ing that respective period, you do know and have testified that you know that the number of people therein employed would bear some relation to the total volume of sales done in the department; is that so? A. I said it has some reflection on it.

Q. You have testified with regard to your lack of knowledge of such comparative figures with regard to Department No. 350? A. Yes.

Q. Have you got the same lack of knowledge with regard to Department No. 331? A. All of the departments; I do not know anything about it.

Q. In other words, with regard to each and every one of these departments you have not any knowledge of the number of sales people therein employed during the period February 1, 1936, to June 30, 1936, as contrasted with the number of people therein employed during the like period in 1935? A. That is true.

Q. True? A. True.

Q. What about the number of fitters employed in Department No. 350? A. I would not know anything about fitters. That is entirely a different division. 4172

Q. You do not know anything about the number of fitters employed in any department in 1936; that is, from February 1, 1936, to June 30, 1936? A. That is right.

Q. Correct? A. Yes.

Q. You do not know how that number was, or how that number would compare with the number employed during the same period in 1935? A. I have no control over those figures.

Q. But you do know, in line with your previous testimony that the number of fitters, their skill and ability, would in some measure be reflected in the volume of sales in this department; is that so? A. It would fall under the head of service.

Q. It would be reflected in the volume of sales? A. Yes.

Q. Who is the buyer for department—I withdraw that 4173
—No. 350 during the period February 1, 1936, to June 30, 1936? A. Mrs. McAllenny.

Q. Who was the buyer in that department during the same period in 1935? A. Mrs. Ramsdell.

Q. Where is Mrs. Ramsdell now? A. Mrs. Ramsdell is now buyer for No. 382 department.

Q. What is the No. 382 department? A. The No. 382 department is the sportswear department.

Q. Do you know the reason why Mrs. Ramsdell—I withdraw that—was that a promotion or a demotion for Mrs. Ramsdell, if you know? A. Well, I could not answer that.

Q. What is your opinion? You are the divisional sales manager; these people are people that work under you? A. In my opinion it is a promotion. It is an opportunity for Mrs. Ramsdell.

Q. In your opinion it is a promotion? A. In my opinion it is a promotion.

Q. Why do you say that, again, now? A. It is an opportunity for Mrs. Ramsdell.

Q. Yes, what? We do not—you do not? A. Yes, I answered your question.

4175

Q. In other words, she was promoted because of the exceptional ability and efficiency that she displayed in the operation of Department 350; isn't that so? A. Right.

Q. When was she promoted? A. I didn't get the question. I am sorry.

Q. I say, when was she promoted? A. The change was made, I believe, some time in January, 1936.

Q. The latter part of January or the early part of January? A. I don't remember.

Q. What is your best recollection? What? A. That was prior to my taking over the division.

Q. What? A. What happened before I don't remember.

Q. Before McAllenny—is that what you called her? A. McAllenny.

4176

Q. Was promoted she was promoted, too, wasn't she before this? She was in a less important job; wasn't she? A. I don't know. I am not in a position to testify as to that.

Q. Well, let's see. Where was she? A. Where was who?

Q. Where was she before she came to be buyer of this department? What was she doing? A. Mr. Taylor made all arrangements for her appointment at the time.

Q. You mean she came from another store? A. Yes.

Q. Where did she come from? A. Lord & Taylor's.

Q. Where are they located? A. New York City.

Q. So that in February we had this new buyer come into this new department; isn't that so? A. Not in February.

Q. Early part of February or the latter part of January.

Mr. Haycraft: He didn't say that. Why put those words in his mouth?

Mr. Weisman: Well, wait a minute. That isn't so important. He said January, 1936.

By Mr. Weisman.

Q. Didn't you? A. Yes. 4178

Q. And it took her a little time to get broken in, as we say, in the business? A. I don't know.

Q. What do you think? She was working under you. A. I think she was a capable person.

Q. When she came there? A. Yes, sir.

Q. What other departments did she take over from Mrs. Ramsdell? A. What other departments?

Q. Yes. A. She took over what is known as the Misses Better Dress Department.

Q. Just 350? A. 350 only.

Q. And she just operates alone in 350? A. That is right.

Q. And she works under you? A. I supervised her operation.

Q. She is directly responsible to you? A. Yes, sir. 4179

Q. You see how she does and what she does; isn't that so? A. That is right.

Q. What about Mrs. Ramsdell? Does she also work— A. Likewise.

Q. —under you? Without giving me figures, what comparative salaries do these two people enjoy? A. I couldn't answer that.

Q. You mean to say that you don't know what each one of these buyers get, what you pay your buyers who work under you? A. I do not remember the figures.

Q. I didn't ask you for the figures. I don't want to be charged with attempting to disclose secrets. I asked you for their comparative—wait a minute. We can get at it this way: Who gets more? A. I don't think that should be answered, Judge.

Q. I don't care what you think.

Mr. Weisman: I submit that it is a perfectly proper answer to give and it is a perfectly proper question.

Examiner Bennett: Well, I will sustain an objection to it. I don't think it throws any light on these proceedings.

4181 Mr. Weisman: I make this offer of proof: That if the witness had been permitted to answer this question, he would have testified that Mrs.—Miss, is it, Ramsdell?

The Witness: Mrs.

Mr. Weisman: —Mrs. Ramsdell receives a proportionately higher salary than Miss McAllenny.

The Witness: Miss McAllenny.

Mr. Weisman: I have a hard time with that name.

Examiner Bennett: That is wholly irrelevant to the proceedings.

Mr. Haycraft: It has no basis in fact.

Mr. Weisman: I think it is entirely relevant in
4182 view of the fact that the witness has testified that as divisional manager, one of the things that enter into the volume of sales that are created in a particular department is the experience and ability of the buyer and it is indicative of the fact that at this particular period there was a change in buyers which in human experience and from the general knowledge we have, we know that that is likely to manifest itself in some reaction in the department.

I think it is particularly relevant when it is taken into consideration with the fact Mrs. Ramsdell is a much higher paid employee, having a longer experience, no doubt, and I think that for that reason it is relevant.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Do you know the comparative length of experience in this particular business that Mrs. Ramsdell had against the other lady? A. I am not familiar with Miss McAllenny's previous responsibilities prior to joining our store. 4184

Q. How long had Mrs. Ramsdell been with your store? A. I couldn't name the number of years.

Q. Was she there long before you came? A. No, I doubt it.

Q. Would you say she was there for five years? A. I wouldn't say. It would be a guess.

Q. What is your best opinion? She works under you. You are her superior. Don't you know anything about her experience and her qualifications? A. I know what her qualifications are.

Q. Well, tell us what are her qualifications? Are they of the best? A. Well, that is comparative. What do you mean by the best?

Q. What do you think? A. I think she is an excellent person. 4185

Q. You think she is an excellent buyer? A. Yes.

Q. Do you think she is the best possible buyer that you could obtain? A. In her present position, yes.

Q. And when you wanted to replace her, you had to go out into the market and look for somebody else? A. I didn't do that.

Q. Your superior did that? A. I can't attest for what he has done.

Q. Didn't he ever tell you that? A. No.

Q. Did you ever discuss this woman with him? A. I have.

Q. Didn't he tell you what efforts he made to get a competent person in charge of this department? A. We have discussed Miss McAllenny.

Q. Now, as a result of that discussion, can't you answer my prior question? A. No, because the discussion does not pertain to your question.

Q. Well, what was the discussion pertaining to? A. May I have the question again, please?

(The question was read.)

4187

A. The discussion pertained to whether or not my opinion—what my opinion was of Miss McAllenny's capabilities in her new job.

Q. You told him you thought she was capable? A. Yes.

Q. What was the amount of merchandise, the average amount of merchandise that you had in all of these departments during the period February 1, 1936, to June 30, 1936? A. I don't recall the figures.

Q. What? A. I don't recall the figures.

Q. I don't want the figures. I want your best opinion at this time.

Mr. Haycraft: I object to the opinion.

The Witness: I won't guess.

4188

Mr. Haycraft: We want the facts developed.

Mr. Weisman: I submit——

Examiner Bennett: If he has any knowledge of it you may get his best recollection.

By Mr. Weisman.

Q. Can't you give us your best recollection? A. No, sir. I have seen the figures; I have reviewed them——

Q. What? A. I have seen the figures and reviewed the average stocks, but I do not remember what they were.

Q. Look. As divisional merchandise manager, do you know what was your average stock, let us say, in Mr. Haycraft's favorite department, No. 350, during this period? A. No.

Q. You have no recollection of it? A. No.

Q. Do you know what the average stock was in the Department 350 during the period, the like period, in 1933? A. No; I wouldn't know that.

Q. That you never knew about? A. No.

Q. Didn't Brother Taylor show you a paper with the average stock that you had during 1933 in that department? A. Not that I remember.

Q. If he had, wouldn't you remember it? A. If he had— 4190

Q. You remembered the other paper. A. I probably would.

Q. So if you don't remember, you say he never showed it to you? A. Probably never showed it to me.

Q. As merchandise manager of this department or as divisional merchandise manager of all of the departments, wouldn't you say that the amount of stock carried in a department has a great relation to the volume of sales that were made in that department? A. It depends on what that stock consists of.

Q. We will come to that later on. But first, we will ask you as to the amount of stock. Isn't there a relation between the volume of sales and the amount of stock?

Mr. Haycraft: He has answered that. 4191

Mr. Weisman: No, he hasn't. Please don't seek to help him. We are getting along fine this afternoon.

Mr. Haycraft: I think it is repetition. He has already answered it.

By Mr. Weisman.

Q. Will you answer it? A. Are you referring——

Mr. Haycraft: Wait a minute. I ask for a ruling on my objection.

Examiner Bennett: Now, what is the record on that?

(The record was read.)

Mr. Haycraft: It is the same.

Mr. Weisman: No, it isn't. I submit——

Examiner Bennett: I will let him answer and be more specific.

4193 The Witness: Let me have that question again. I am sorry.

Mr. Weisman: Well, I am sorry, too. I think it will be easier if I repeat it, Judge.

Examiner Bennett: All right.

By Mr. Weisman.

Q. I say to you, don't you know as divisional merchandise manager, exercising your functions, that the amount of stock that a store carries bears a relation to the volume of sales? A. Yes, it does.

Q. In other words, it is perfectly apparent that if you don't have a large stock of merchandise you can't make a large amount of sales; isn't that plain? A. It isn't apparent, no.

4194 Q. But it is a fact even if it isn't apparent? A. It is not.

Q. Is it your statement that when you have a slim stock that aids you in having a large volume of sales? A. If that is—if that slim stock consists of merchandise which is totally desirable as against a large stock of merchandise.

Q. I don't mean that. A. Which——

Q. Let me ask you——

Examiner Bennett: Just let him finish.

Mr. Haycraft: Let him finish his answer.

Mr. Weisman: He can finish it.

The Witness: As against a large stock, which is partly desirable, and the major part undesirable, I would say I would prefer a small stock that is totally desirable.

By Mr. Weisman.

Q. As between two stocks, both of desirable merchandise, one which is very slim and one which is large, which of those two would you prefer? A. I don't follow you. I am sorry. 4196

(The question was read by the reporter.)

A. I naturally would prefer the larger stock providing the ratio of sales demanded that large stock.

Q. All right. And I assume that—you say that you naturally would prefer the larger stock because a larger stock of fresh, seasonable merchandise is more conducive to a large sales volume than is a smaller stock of the same kind of merchandise; isn't that so? A. I didn't say that.

Q. Well, if you didn't say it, is that a fact? A. No, sir.

Q. In other words, you now say that a large stock of seasonable merchandise is not more conducive to a large volume of sales than is a slim, narrow stock of seasonable merchandise; is that what you say? A. May I have that question, please? 4197

(The question was read.)

A. I mean by relation——

Q. No. I want to know whether you say that latter thing? A. I did not.

Q. Well—let us start off again, then, because you say neither the one nor the other is the fact. I want to find out what the fact is.

Examiner Bennett: Now, Mr. Weisman, if you can get to a place where you can shut it off, we will——

Mr. Weisman: We will adjourn?

Examiner Bennett: We will adjourn.

Mr. Weisman: I think——

Examiner Bennett: To to-morrow morning.

Mr. Weisman: I think this is as good a place as any. I will ask him one or two questions, maybe, because this thing is going on for some time.

Examiner Bennett: All right.

By Mr. Weisman.

4199 Q. Isn't it your opinion that a large stock of seasonable merchandise in a store such as Strawbridge & Clothier is more conducive to a large volume of sales than is a slim stock? A. No, sir. There is a relation to the demand of desirable merchandise at the time.

Q. That is your best answer? A. That is my answer.

Q. Now, do you know what was the——

Mr. Weisman: Judge, we are getting into rather deep water at this point with this witness. I think maybe we had better adjourn.

Examiner Bennett: We will adjourn until 9 o'clock Eastern Standard time, to-morrow morning.

(Whereupon at 4.45 o'clock P. M., August 4, 1936,
4200 the hearing in the above-entitled matter was adjourned.)

BEFORE THE

FEDERAL TRADE COMMISSION.

IN THE MATTER OF FASHION ORIGINATORS GUILD OF AMERICA, INC.; MICHIGAN AVENUE GUILD OF CHICAGO; MINNEAPOLIS FASHION GUILD; LADIES' READY-TO-WEAR GUILD OF BALTIMORE; NATIONAL FEDERATION OF TEXTILES, INC.; their respective officers, directors, and members.	Docket No. 2769.

4202

Court Room No. 313,
U. S. Post Office Building,
Philadelphia, Pa.,
August 5, 1936.

(Met pursuant to adjournment, 9. A M.)

Before: HON. JOHN W. BENNETT, *Examiner.*

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

4203

MILTON C. WEISMAN, Esq., GEORGE FELDMAN, Esq., HERBERT S. KELLER, Esq., and M. A. ALBERT, Esq., appearing for the Fashion Originators Guild of America, Inc.

ALLEN S. OLMSTED 2ND, Esq., of SAUL, EWING, REMICK & SAUL, 2301 Packard Building, Philadelphia, Pa., appearing for John Wanamaker of Philadelphia.

PAUL FREEMAN, Esq., appearing for Strawbridge & Clothier, Philadelphia.

I. I. JAMISON, Esq., of SUNDHEIM, FOLZ & SUNDHEIM, 1632 Bankers Securities Building, Philadelphia, Pa., appearing for Lit Brothers, Philadelphia.

PROCEEDINGS.

Examiner Bennett: Gentlemen, we will be in order, please. You may resume.

4205 Mr. Weisman: Mr. Chance, will you come around, please.

SAMUEL J. CHANCE resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. Weisman.

Q. Mr. Chance, by the way, are you here subject to the service of a subpoena? Was a subpoena served upon you in this proceeding? A. It was not.

Q. Do you know whether or not a subpoena was served upon Mr. Taylor? A. I believe there was.

4206 Q. You do? A. Yes.

Q. Did you ever see the subpoena? A. No.

Q. Do you know whether or not a subpoena was served upon Mr. Tily? A. Mr. Tily?

Q. Yes. A. I heard something in reference to that, too.

Mr. Weisman: Mr. Haycraft, will you make a statement for the record whether or not Mr. Tily was served with a subpoena, and whether or not Mr. Taylor was served with a subpoena?

Mr. Haycraft: If the Examiner wishes it.

Examiner Bennett: I have no wish whatsoever, one way or the other. You may make the statement or you may not.

Mr. Weisman: Are you trying to conceal something, Mr. Haycraft?

Mr. Haycraft: No. Both Mr. Tily and Mr. Taylor were subpoenaed.

By Mr. Weisman.

Q. When we adjourned last night I had concluded asking you a series of questions concerning your knowledge of certain matters and you stated you had not remembered. 4208
Then, I believe at the time we were discussing the size of the—strike that out—or the amount of stock carried in the departments which came under your supervision in February of this year? Do you recall that? A. There was some discussion about stocks.

Q. Have you, during the interval between yesterday's testimony and your appearance here to-day refreshed your recollection with regard thereto? A. I made no attempt to do so whatsoever.

Q. No attempt at all? A. No.

Q. You knew that we were going to continue along that line of inquiry to-day? A. I did not know what your plan was.

Q. Did you not expect us when we had unfinished questions to have the finish to-day; to continue and finish up 4209
the query to-day?

Mr. Haycraft: That is objected to. We cannot expect the witness to be a mind reader.

Mr. Weisman: Exception—did your Honor sustain that?

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

May we strike from the record "We cannot expect the witness to be a mind reader?" I also want to make a formal further objection at this time to these constant statements by Mr. Haycraft as to what we can expect or what we cannot expect. It is perfectly manifest that it is highly improper. It is, and must be apparent to the Court as it is to anyone who shall hereafter read the record that one does not have to be a mind reader to do that, but only has—that is, one who can exercise ordinary common sense and judgment that God gives everyone who is not an animal below mankind to know that
4211 when I started an inquiry along a certain line that it may be expected to be continued if it is not completed, and I resent the statement that he is not expected to be a mind reader.

I ask that it be stricken from the record and that counsel be reprimanded severely by the Examiner for his manifestly improper and grossly discourteous conduct.

I want in the record that I am utterly fed up with that type of interruption which can have for its only purpose the throwing of dust in the eyes of those who may have to consider this matter at some time or another.

Examiner Bennett: Motion denied.

Mr. Weisman: He is an experienced lawyer, and
4212 his only purpose is and can be to annoy, harass, and clutter up the record with irrelevant matter.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Now, in the performance of your duties as divisional merchandise manager, have you any opinion as to the size, comparative size of seasonal stock of merchandise in rela-

tion to the volume—or, we will put it this way to make it a little more simple for you—have you any opinion as to whether or not the size, comparative size of seasonable stock of merchandise has any relation to the volume of sales that you will do ordinarily in those departments? A. It has a relation.

Q. Would you say that if you have a reasonably large stock of seasonable merchandise in one of your departments, then you are more likely to do a large volume of business in those departments than if you had a smaller or narrower stock of the same kind of merchandise in those departments? A. Not necessarily.

Q. I did not ask you whether it was necessarily so or not. I asked you whether or not it was not generally so. 4214
A. No.

Q. No? A. No.

Q. In other words, it is your testimony that the amount of seasonable stock, whether or not the same be large or small, does not affect the volume of sales in those departments? A. It depends upon the traffic.

Q. Does it or does it not in Strawbridge & Clothier, under the circumstances that you have observed to exist there, have a relation to the volume of sales? Now, I want to call your attention to the fact you said no, and I asked you if you really meant "no," and you answered "no" again. I want you to think this over carefully, and in view of the fact that you have answered this twice "no" state if it does or does not. A. Well—well—well, it does. 4215

Q. Well, you finally got to it. A. It does.

Q. Now, do you know the comparative conditions of stock of Strawbridge & Clothier in these departments during the time they were under your supervision, to-wit, February 1, 1936, to June 30, 1936, as compared to the time when they were not under your supervision, to-wit, February 1, 1935, to June 30, 1935? A. Those figures are submitted——

Q. No, I did not ask you about these figures. Will you please pay attention to my question and give me an answer to it? A. Well, what is the question?

Mr. Weisman: I shall ask the Examiner to permit the question to be read.

By Mr. Weisman.

Q. Now, listen carefully, the reporter is going to read the question and I am going to ask you to follow it very carefully and give us an answer to it.

(Question read.)

4217 Examiner Bennett: "Do you know" is the question.

The Witness: I do not know it now.

By Mr. Weisman.

Q. Did you know it yesterday? A. No.

Q. Do you know—I will withdraw that. Did you know yesterday whether or not the stock of fresh, seasonable merchandise in the department of Strawbridge & Clothier, under your supervision, was larger or smaller in the time that it was under your supervision and as contrasted with the period in 1935 immediately before referred to? A. I do not remember.

Q. I asked you, did you remember it yesterday? A. No.

Q. Did you know it yesterday? A. No.

4218 Q. You stated in answer to one of my queries yesterday that another matter which would have a bearing on the volume of sales was the seasonableness of the stock and its freshness; is that correct? A. I don't remember making any such statement.

Q. If you don't remember making such a statement I will now ask you: Would the seasonableness or the freshness of the stock have a relation to the volume of sales of those departments? A. Yes, it would.

Q. Now, did Mr. Taylor at any time show you any paper as he did concerning some other matters which advised you with regard to the freshness and seasonableness of the stock of the departments now under your supervision during the period which they were not under your supervision, to-wit, February 1, 1935, to June 30, 1935? A. He has not.

Q. Did anybody else? A. Not for that period.

Q. Do you know what was the condition of the stocks of those departments during that period with regard to their freshness and seasonability? A. You are referring to 1935?

Q. I certainly do. A. No, I don't. 4220

Q. So if you don't know, did you know it yesterday? A. I did not.

Q. Did you know how the freshness or the seasonability of the stocks in those departments under your supervision were comparatively during the period 1935, that we have referred to, and the period 1936? A. I did not.

Q. Did you know it yesterday? A. No.

Mr. Weisman: May I have just a moment?

(A short pause was had.)

By Mr. Weisman.

Q. What priced merchandise do you handle in Department 331? A. Our line price that we buy into begins from $19.75 up. There are types—— 4221

Q. What is that? A. $19.75 and up. There are certain——

Q. Well——

Mr. Haycraft: Just a moment. Let him answer.

A. There are certain months in the year when we may bring in cheaper merchandise depending upon the season.

Q. Is that the wholesale price or the retail price? A. Retail price.

Q. What is the wholesale price? A. The wholesale price would be from $10.75 up, and a lower cost in the months which that merchandise would be in demand.

Q. What would that lower cost be wholesale? A. Could be as low as $3.75 for a certain type of cottons.

Q. I don't want to know what it could be. I want to know what it generally is. A. $3.75 and up.

Q. In other words, then, I take it, in this Department 331 you purchased merchandise from $10.75 up regularly, and in certain off season periods, or when you have certain types of sales you purchase dresses for sale there as low as $3.75? A. That is correct.

4223 Q. From how many firms would you say you purchase the merchandise that goes into this department? A. I couldn't say how many.

Q. What would be your best guess? A. I wouldn't guess.

Q. Would you say that you purchase it from more than 100 firms during the year? A. Different firms?

Q. Yes. A. That is possible.

Q. Would you say that you purchase it from more than 150 firms during the year? A. I wouldn't say.

Q. Do you think that the total number of firms with which 331 department does business is less than 150 firms? A. I believe it is.

Q. Would you say that it is between 125 and 150? A. I would rather stick to my hundred as being the best guess.

4224 Q. In other words, you deem it that the number of firms that you do business with in this particular department during the period of a year is about 100? A. Yes. There are certain firms we purchase more from than others, we consider regular resources.

Q. Well, what is your recollection of the total annual volume of business done in this department? A. 331?

Q. Yes. A. Approximately $100,000.

Q. Have you any idea or opinion with regard to the number of manufacturers in the City of New York who

are engaged in the business of making merchandise, dresses, selling at the wholesale price of $10.75 and up?

Mr. Haycraft: That is objected to, Mr. Examiner, as irrelevant and immaterial and not proper cross-examination, not the subject-matter of opinion.

Examiner Bennett: Well, it is not a matter of opinion. You may get his best recollection, if he has any, or knowledge.

The Witness: I have no knowledge, sir.

By Mr. Weisman.

Q. Do you know whether or not there are a thousand such manufacturers? A. I have not. 4226

Q. Did you in February, 1936, seek to inform yourself with regard thereto? A. The total number of dresses manufactured——

Q. No, I asked you, did you seek to inform yourself as to what number there was? A. I did not.

Q. Did you in the practice of your duties as divisional merchandise manager know that there were and are regularly issued a large number of directories setting forth the names and addresses and price lines of various manufacturers? Did you ever hear of that?

Mr. Haycraft: I interpose the same objection, if your Honor please, that I interposed to the previous question.

4227

Examiner Bennett: Overruled.

Mr. Haycraft: Exception.

Examiner Bennett: Yes.

By Mr. Weisman.

Q. You may answer the question. A. Yes, sir.

Q. Did you examine any such directories? A. I have quite a few directories that I went through—I went through quite a number of directories, yes.

Q. In going through those directories, did you not observe that there were at least in excess of 1,000 of such manufacturers located in the City of New York? A. I did not notice that.

Q. Did you notice that there were a large number of them listed there? A. Yes, sir.

Q. What is your best opinion as to what that large number was?

Mr. Haycraft: I object to his giving an opinion. That is a matter of fact.

Examiner Bennett: Yes, that is a matter of fact. I do not think his opinion would be advisable there.

4229

By Mr. Weisman.

Q. What is your recollection as to what that large number was? A. I do not know.

Q. You do not know? A. I do not.

Q. Would you deny that it was in excess of 1,000? A. No.

Q. So, you would not deny that which you do not know? A. I beg your pardon?

Q. So, you would not deny that which you do not know? A. No. I do not know it to be a fact. I did not check it.

Q. Did you think it was important? A. The total number is not important, no.

Q. The total number is not important? A. Absolutely

4230 not. It is quite immaterial.

Q. Oh, you say it is quite immaterial? A. I certainly do.

Q. Very well. This is quite interesting. Did you ever hear of the Ace Dance Modes? A. I, personally, did not.

Q. Did you know that they make $10.75 dresses? A. No.

Q. Do you know that they make dresses of the same general style as do the members of the Fashion Originators Guild of America, Inc.? A. I do not.

Q. You do not know that? A. I certainly do not.

Q. Well, this is most extraordinary. Did you seek to ascertain whether or not they did on or about the month of February, 1936? A. I, personally, did not.

Q. Did you direct anybody to do so? A. Not that particular line; no, sir.

Q. Did you do so with regard to Ace-High Dresses, Inc.? A. I did not do anything with regard to any particular man.

Q. Do you know, or have you any idea—I withdraw that. Do you know the total volume of dress sales at wholesale in the City of New York made to sell at the price of $10.75 and up? 4232

Mr. Haycraft: The same objection as to the previous question.

Examiner Bennett: I think I will let him answer that. Overruled.

Mr. Haycraft: Exception.

A. I do not know the total volume of dresses sold at wholesale in New York City at $10.75 and up, no.

By Mr. Weisman.

Q. Do you know whether or not the total volume of dress manufacturers engaged in the business of manufacturing dresses at $10.75 and up in the New York market is in excess of $175,000,000 annually? A. I do not know. 4233

Q. You do not know that? A. I certainly do not.

Q. How far are you from New York? A. Just from Philadelphia to New York.

Q. I see. Do you have any idea on that subject? A. I have not.

Q. You have no idea whatsoever? A. No.

Q. Just a blank. Do you know what was the total volume done by members of the Fashion Originators

Guild of America, Inc., annual volume of its members who were members of the Guild in February, 1936? A. I do not.

Q. Well, do you know that it was less than $20,000,000? A. No.

Q. If that were the fact, would that in any wise affect your testimony given yesterday? A. My testimony given yesterday is my experience——

Q. No, no, I am asking you if that were a fact if it would in any wise affect your testimony given yesterday? A. It would not.

Examiner Bennett: Off the record.

4235 (There was a discussion off the record.)

Examiner Bennett: Back on the record. You may proceed, Mr. Weisman.

By Mr. Weisman.

Q. I asked you whether or not if these figures I have given you were true whether or not that knowledge would affect your testimony that you rendered yesterday? A. No.

Q. No? A. No.

Q. It would not. Very well. A. No.

Q. Now, is the early part of the year, that is, the first six months of the year, a period during which a larger or a lesser volume of sales is done in your department than

4236 the latter six months?

Mr. Haycraft: Objected to, Mr. Examiner, unless it is confined to the five months about which the witness testified.

Examiner Bennett: Well, I ask that——

Mr. Weisman: What?

Examiner Bennett: I will ask that you designate the comparison.

Mr. Weisman: Well, I want to—may it please your Honor, this is a foundation question. I will withdraw that question, first.

By Mr. Weisman.

Q. Would you give us a statement of your opinion as to how the month of July compares in volume to the month of June? A. The month of July is considerably less than the month of June.

Q. Considerably less? A. Yes.

Q. When you say "considerably," what do you mean by that? What percentage? What does that mean? A. I don't remember per cent. It is much less in total sales. 4238

Q. How would you compare it with February? A. I don't recall.

Q. What is your best opinion, as the divisional merchandise— A. I am sorry.

Q. —manager? A. I won't guess. If—the figure of February against that of July.

Q. Well, what is your opinion as to the first five months of the year as compared to the last five months?

The Witness: The first six months as against the latter six months?

By Mr. Weisman.

Q. Yes. A. Our total sales were about equal.

Q. How does January compare with February? 4239

Mr. Haycraft: That is objected to as not being the month within the period.

Mr. Weisman: It is a foundation question, your Honor.

Examiner Bennett: Well, I will let you answer that.

The Witness: I don't recall the comparisons.

By Mr. Weisman.

Q. Don't you remember testifying in answer to a question by his Honor that January was a very good month?

Mr. Haycraft: That is objected to.

By Mr. Weisman.

Q. Do you remember so testifying?

Examiner Bennett: Sustained. Sustained as far as that is concerned. The record shows it.

By Mr. Weisman.

4241

Q. Do you remember?

Mr. Haycraft: The same objection.

Examiner Bennett: Sustained.

Mr. Weisman: I submit on the matter of credibility I should be permitted to ask him what happened yesterday.

Examiner Bennett: Yes. Well——

Mr. Haycraft: Apparently you can't remember what happened yesterday.

Examiner Bennett: You may test his memory very thoroughly.

Mr. Weisman: I am going to ask this question again, your Honor. I want to get it clear on the record.

4242

By Mr. Weisman.

Q. Do you or do you not remember that yesterday you were asked by his Honor, Judge Bennett, as to whether or not January was a good month?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will sustain the objection as I did before. I think that the purpose that is

being served by this question has been worn threadbare, as it were.

Mr. Weisman: I think—I take it, then, your Honor feels that I don't need to further show that his recollection is of the worst? It has been worn threadbare.

Examiner Bennett: I can't make anything more specific than I said.

By Mr. Weisman.

Q. Well, I want to find out from you what is your opinion as to the volume of business done in January as compared to the balance of the first six months of the year. 4244

Mr. Haycraft: Same objection.

By Mr. Weisman.

Q. In other words, if you did $50,000 in the five months, February to June 30, is it fair to say that you ought to do an equal one-fifth, or $60,000 for the six months?

Mr. Haycraft: I object to that as unintelligible.

Examiner Bennett: Well, I will overrule the objection if you can answer it.

The Witness: May I have that question again, please?

(The question was read.)

The Witness: I can't answer that as a matter of comparing one month to another. I do not recall those—those figures are submitted to us and used at the time that they are submitted. 4245

By Mr. Weisman.

Q. I don't care what is submitted. I want to find out your opinion as divisional merchandise manager here tendered to me as an expert as to the amount of business

that you relatively do in the month of January as compared to the other five months of the year. Now, isn't that plain to you?

Mr. Haycraft: Objected to. It has already been answered twice.

Mr. Weisman: I think we can pursue this inquiry. It is rather important.

Examiner Bennett: Yes. Well, I will sustain an objection to any further repetition of that particular question. He has answered that he doesn't know. What is the use in asking him any further?

Mr. Weisman: May I have Commission's Exhibit
4247 No. 411?

(Commission's Exhibit 411 was handed to Mr. Weisman.)

By Mr. Weisman.

Q. I show you Commission's Exhibit No. 411 and ask you whether or not that is not a statement setting forth the units of merchandise sold in Department 331 during the period of February 1st to June 30th, 1936?

(Exhibit 411 was handed to the witness.)

Mr. Haycraft: It speaks for itself.

A. Yes, that is.

4248 *By Mr. Weisman.*

Q. Now, I will ask you to take a pencil and paper and ascertain whether or not if you extend the units by the price shown it will not appear that during the first—during that five-month period the total volume of business was $37,873? Just take a pencil and paper and see if you can figure that out.

Mr. Haycraft: I object to that, Mr. Examiner, as assuming some more facts which, apparently, are not in the record.

Mr. Weisman: That is in evidence.

Mr. Haycraft: Wait until I get through with my objection. I know of no evidence in this case showing the value of the garments sold other than the exhibit itself. If that is true, why, then, the exhibit will speak for itself. It is not necessary to conduct this cross-examination.

Mr. Weisman: I think I can test him on his statement that they do $100,000 when five months shows $73,873. It is entirely illuminating on the worth of his entire testimony. 4250

The Witness: I said approximately, Judge. That may vary.

By Mr. Weisman.

Q. It may vary another $100,000? A. I didn't say that. I said approximately. That is my reason for not wanting to state any particular figure to you that I am not sure of.

Q. Would you say approximately $300,000? A. I said approximately $100,000.

Q. Well, now that your attention is called to the fact in five months, that is, the first six months of the year, exclusive of January, by your own exhibit you did approximately $74,000 in this business; in this department, do you want to change that statement of $100,000? A. I don't want to change any statement, no. 4251

Q. Do you still say that it is your best opinion that you do $100,000 a year in this department? A. I said it is approximately $100,000.

Q. Well, now, with this— A. That is not a definite figure.

Q. Now, with this information—it is what? A. It is not a definite figure. I said it is an approximate figure.

Q. Let me ask you this: Don't you think that $180,000 would be a much fairer approximate figure in view of what is now called to your attention? A. I don't know whether that would be or not.

Q. Well, we will have to see how your mind operates. This is five months, isn't that so (indicating)? A. That is right.

Q. You are sure of that? A. Yes.

Q. Now, it is approximately $75,000—$73,873. A. I am taking your word for it.

Q. All right. Now, how much is one fifth of $75,000? A. $15,000.

4253 Q. So, then, is it fair to say that your average monthly sales during the five-month period is $15,000 a month in that department? A. I wouldn't say.

Q. In spite of this exhibit you wouldn't say? A. According——

Q. You understand— A. According to your figure which you have told me, that is the figure.

Q. This isn't my figure. I am saying that this is your figure. You produced this exhibit. A. Well, I produced it, but you extended it.

Q. Yes. A. If that is the figure, that is so according to the percentage and average.

Q. Assuming that my extensions were correct? A. Yes.

4254 Q. Then will you say that the average monthly business during this five-month period was $15,000 a month? A. According to that paper, yes.

Q. Yes. And then would it be fair to say that if you did an average of $15,000 a month during such months as February, March, April, May and June, that you would do approximately $15,000 during January? A. According to that, possibly, yes.

Q. Yes. So that would give you $90,000 for the first six-months; isn't that so? A. That is right.

Q. With that knowledge and with your statement that the second half of the year is approximately the same as the first half of the year, would you not say that in this Department 331 a fairer statement of your total annual business is $180,000 or twice $90,000? A. That figure I know is not correct.

Q. Well, do you mean that this is incorrect? A. No, the figure you mention, $180,000, I know for certain that is not correct. It is around $100,000, which would be a fairer figure.

Q. How do you square that with this exhibit?

(A short pause.)

4256

Q. What? A. Well, now, there is a difference there as I have stated.

Q. There is a difference of $80,000? A. Yes.

Q. Let me see. How do you know? You have only been in this department since February; haven't you? A. That is right.

Q. Before you got in the department did they show you what had been done in the previous year in that department? A. I recall seeing those figures.

Q. What did they tell you was done in that department the previous year? A. I don't remember the exact figures.

Q. I don't ask you about the exact figure. I want the approximate figure. A. I had my guess to you as $100,000. 4257
I based that on last year's performance.

Q. In other words, it is your best guess that prior to that, during the year 1935, the total volume of business done in this department was approximately $100,000? A. That is what I said.

Q. And notwithstanding that, that since February 1st of this year since you have had this trouble with the Guild, in the first five months your total volume done in

that department is, if my extensions are correct, $73,873; is that correct? A. According to your extensions, yes.

Q. Yes. On your direct testimony you yesterday gave a list of Guild houses which sold merchandise to this department; isn't that so? A. I have.

Q. And you stated, referring to these Guild houses, that they appeared to be resources used by that department. Do you remember saying that? A. No, I don't.

Q. Do you deny that you said it? A. You are referring to the paper which was read off in the record?

Q. No, I am referring to your testimony. A. I read off names from a paper into the record as resources used
4259 by that department.

Q. Do you mean to say that aside from the fact that you read it off from the paper, you didn't know in truth or in fact whether or not they were resources used by that department? A. At the time I read them I said they were resources used by that department.

Q. I know what you said, but I wanted to know what you knew. Did you know it, or did you merely read from the paper? A. I said I knew it.

Q. Well, did you know it? A. Yes.

Q. All right. Then you did say that they appeared to be resources used by that department; isn't that so? A. I may have said that.

Q. When you said they appeared to be resources you referred to the fact, did you not, that they appeared on
4260 that paper to be resources? A. If that is the paper that is being referred to, yes.

Q. Well, when you said that they appeared to be resources, did you mean that they were the total resources of that department? A. No. If I recall correctly, they are the resources that we were purchasing merchandising from Guild houses only.

Q. In other words, you gave us a list of houses from which during the past year, 1935, this department had

purchased merchandise; is that not correct? A. Some of them, yes.

Q. Didn't you give all of them? A. I say, some of the resources which that department used.

Q. You mean that the Guild was only some of the resources? A. That is right.

Q. What other resources did you have? A. There were others that I do not know.

Q. Would you say that there were approximately seventy-five other resources? A. In the course of a year there may be seventy-five resources that purchases are made from.

Q. No. I said seventy-five other resources. A. I say, 4262
in the course of the year there may be seventy-five others that the department purchases from.

Q. In other words, this list you gave us was only some of your resources of this department? A. They were the Guild resources only.

Q. Yes. And the Guild resources only of this department amounted to about 25 per cent. in number of your resources, according to your testimony; isn't that so? A. Yes.

Q. In other words—I will withdraw that "in other words." I don't need it in other words. It is sufficient in those words. In this Department 331 what is your main retail price line? A. Total units sold?

Q. Yes, the biggest—what do you do your biggest business in? A. $19.75 retail is an important price line with 4263
us.

Q. What would you say is the most important price line? A. Well, now, that depends, from a standpoint of prestige or sales?

Q. Sales we are talking of, volume of sales here. A. I would include $19.75 to $29.95.

Q. I see. Your merchandise that you sell at retail for $19.75, what is the wholesale price of that? A. I would say the average wholesale price would be around $12.75.

Q. Well, you do a lot of buying you just said at $10.75; don't you? A. I said the average. There could be some that costs us more.

Q. I see. What do you sell your $10.75 merchandise for? A. $19.75.

Q. You testified that you tried to get merchandise from Robinson Brothers at Boston; do you remember that? A. I believe that that is in the affidavit which I have taken.

Q. No. Didn't you testify to that yesterday? A. I read it off a paper.

Q. Your testimony, your statement yesterday, was that
4265 you read off a paper? A. That particular statement, I believe.

Q. Yes. Well, now, let me ask you, what price merchandise does Herman Beispel make? A. I am not familiar with his price lines

Q. What type of merchandise does he make? A. He makes a finer type of garment.

Q. What do you mean by "finer"? Finer than someone else? A. Finer by comparison to other makers.

By Mr. Weisman.

Q. Do you mean that Herman Beispel at $10.75 would give you a finer garment than somebody else at $12.75? A. No. My remark was directed at possibly the manu-
4266 facturer making a cheaper garment.

Q. You mean if you pay Mr. Beispel $10.75 for a garment you will get a garment that is better than the garment you would get if you pay less than $10.75 for a copy of it; is that so? A. I did not say that.

Q. I am trying to find out what you mean by that statement. A. Possibly at $6.75.

Q. In other words, you can get a better garment for $10.75 from Mr. Herman Beispel than you can get from somebody else for $6.75? A. Yes.

Q. You are quite sure you do not know what price line he makes? A. That is right.

Q. You are quite sure, are you, that you do not know the type of garment that he makes? A. No. I am not quite sure. I am sure that he makes a finer garment.

Q. In any event, I mean—I am speaking of quality, you do not know the difference between quality and type? A. I do.

Q. Well, then, you do know the difference between quality and type? A. Yes.

Q. Do you know the type of garment that he makes? A. I do not.

Q. Do you? A. No. 4268

Q. Well, if you do not know the quality—I withdraw that—well, if you do not know the type, how can you know—if you do not know the type and you do not know the price, what is there that enables you to say that he makes a finer garment; tell us what your reasoning is by which you come to that conclusion? A. I come to that conclusion from the contact that I have had with the buyers.

Q. In other words, from what somebody else told you? A. Yes, sir.

Q. Not from what you know yourself? A. Oh, no, from what they told me.

Q. Did they tell you whom he makes a better garment than? A. They told me—what do you mean—did they tell me whom he makes a better garment than?

Q. Or, more grammatically speaking, than whom does 4269
he make a better garment? A. No. They did not tell me that.

Q. Do you know the price range of the dresses manufactured by H. Gans? A. I do not.

Q. You do not? A. No.

Q. No? A. No.

Q. Let us be sure about it? A. I am sure.

Q. Do you know the type of garment that he makes? A. I do not.

Q. No? A. No.

Q. Pretty sure? A. Pretty sure.

Q. Positive? A. Positive.

Q. Would you also say that Mr. H. Gans makes a finer garment? A. Of course, due to the fact that both of those garments were used in that shop, I would say yes. He makes better than the cheaper garments.

Q. Do you know the price range of Mr. J. Greenberg? A. No.

Q. You do not? A. No.

4271 Q. Do you know the type of garments that Mr. J. Greenberg makes? A. No.

Q. You do not? A. No.

Q. Do you know the price, and by that I mean the wholesale price of the garments manufactured by Baron Dress Company? A. Yes, I do.

Q. You do? A. Yes.

Q. Now we have something. A. Do we?

Q. Yes. What is their price range? A. $10.75 and up.

Q. What type of dress do they make? A. The women's type.

Q What is that? A. The women's type.

Q. The women's type? A. Yes.

Q. Now, is that the best answer you can give—the women's type? A. Yes.

4272 Q. Well, well, well, it is the women's type of dress. Do you know the various types of dresses in the dress industry? A. You mean daytime or evening or dance dresses, or what?

Q. I want to know what you think about it. A. If that is what you refer to—just what do you refer to?

Q. What do you have reference to? It is not what I refer to, it is what you have reference to. So what you have reference to, that is the only way you can qualify

Baron's dresses, namely, into a type, is that they are a women's type dress? A. Well, I know that he specialized in that particular type of dress.

Q. He specializes in a women's type of dress? A. Yes.

Q. Do you know C. H. D. Robbins? A. C. H. D. Robbins is a finer maker.

Q. No, no, no. I ask you if you know his price range? A. $10.75 and up.

Q. $10.75 and up? A. Yes.

Q. What type dress does he make? A. He specializes in women's type.

Q. Women's type? A. Yes.

Q. What is Mr. A. Goodman's price range? A. I am not 4274
familiar with his price range.

Q. You are not? A. No.

Q. No? A. No.

Q. Sure of that? A. Sure of that.

Q. Do you know the price range of the Perlas & Gilbert? A. What is that?

Q. Do you know the price range of Perlas & Gilbert? A. No.

Q. You do not? A. No.

Q. Do you know the type of dress that they make? A. No.

Q. No? A. No.

Q. I just want to be sure. A. Well, you are.

Q. I do not know whether I am or not. Do you know the range of prices of dresses made by Harry Frank? A. 4275
No.

Q. You do not? A. No.

Q. Do you know the type of dresses that he makes? A. No.

Q. Do you know whether or not Harry Frank is a dress manufacturer or a coat and suit manufacturer? A. I do not know that.

Q. You do not even know that? A. No.

Q. Well, well. A. I do not.

Q. Do you know the Dresden Dress Company? A. I have heard of them.

Q. You have heard of them? A. Yes.

Q. Do you know what price garment they make? A. I do not.

Q. Do you know what type of garment they make? A. I do not know that.

Q. You do not know that, either? A. No.

Q. No? A. No.

Q. Do you know the Friedman Dress Company? A. Yes.

4277 Q. You do? A. Yes.

Q. Here is one you do know. A. Well, I know of them.

Q. Do you know what price dress—what price garment they make? A. I do not know.

Q. You do not know that? Do you know what type of garment they make? A. What question do you want me to answer?

Q. First, do you know what price garment they make? A. I do not know that.

Q. Next, do you know what type of garment they make? A. No.

Q. Did you ever hear of Joseph Greenberg & Bettina? A. I read that yesterday.

Q. You read it? A. I heard of them, yes.

4278 Q. You just said you read it yesterday. When and where did you read it? A. From the paper that I have had in my mind here.

Q. As a result of reading it from a paper that you had in your hand, you got the knowledge which enabled you to testify concerning that; is that it? A. It was a——

Q. Is that it or is that not it? A. Yes.

Q. Yes? A. Yes.

Q. Stick to the questions and we will get along better. Now, what price dress do they make? A. I do not know.

Q. You do not know? A. I do not.

Q. Do you know whether or not they make daytime or dance frocks? A. I do not know.

Q. You do not know the type of dress, then, either? A. No.

Q. Then, you do not know the price of the dress or the type of the dress that they make? A. I do not.

Q. Or even that they make a dress? A. I know that they are in the business.

Q. Do you know whether or not—I withdraw that. You do not know what type of dress they make? A. No. 4280

Q. What about Charles—we will come to that later What about Julius Grossman and Greenberg? A. I do not know.

Q. You do not know what price dress they make? A. No.

Q. You do not know what type dress they make? A. No.

Q. Do you know if they make dresses at all? A. They are in that line.

Q. How do you know that? A. I know that because they were on that list.

Q. You only know what was on that list what you read yesterday; is that it? A. It was compiled by the buyers, buyers who are better qualified than I am to testify to that. 4281

Q. The buyers are much better qualified about that than you are? A. Yes.

Q. Much better qualified? A. Yes, much better qualified than I am because of their experience in the department.

Q. Now, we come to Joseph Halpert. How about him?—as to whom do you know what price line he manufactures?

Mr. Haycraft: I object to that.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

I offer to prove if the witness had been permitted to answer he would have testified that he does not know and that he did not know, and that he never did know.

Examiner Bennett: That is already in the record and it is of no consequence except to take up time in view of the concession.

Mr. Weisman: Do you mean it is in the record? There is in the record a concession that he does not
4283 know any of these people? We do not want to waste time, your Honor.

Examiner Bennett: Yes. As I understand it there is in the record a concession that he does not know any of these people. Why should you want to waste time in view of that.

Mr. Weisman: Well, your Honor, I am a little surprised at that. Then, do I understand that counsel for the Commission will stipulate that this witness does not know the price range of garments manufactured, or the type of garments manufactured by the following firms: Herman Beispel, H. Gans, J. Greenberg, Baron Dress, C. H. D. Robbins, A. Goodman, Perlas & Gilbert, Harry Frank, Dresden Frocks, Friedman Dress, Joseph Greenberg &
4284 Bettina, Julius Grossman & Greenberg, Joseph Halpert, LaRue Dresses, Frank Starr-Friedlander, Dolces Dresses, Ed Gerrick Company, Max Heit, E. A. Jackson-Bienard, Rudolph Gowns, Matthew Kadetsky, Gardner Schwartz, Bernard Appel, Boston; Goldstein & Entin, Boston; Baron Dress, Boston, and Robinson Brothers, Boston;

Mr. Haycraft: No. Certainly not.

Examiner Bennett: Well, that is what I understood.

Mr. Haycraft: Just a moment. My concession related to the balance of the testimony, not the ones to which he has testified for the witness has already testified with respect to two of those that he knew something about them, and he gave testimony, as I remember it, as to them; my concession related to the testimony of the remainder to which he has not as yet testified. I think as to C. H. D. Robbins and one other concern, Baron Dress, he said he did know that; he had some knowledge as to that, but as to the rest of them the concession goes, yes. 4286

Mr. Weisman: Then, all right, I will take your stipulation as to the rest of them.

Examiner Bennett: I think it is clear now.

Mr. Weisman: I will take it, Judge.

I assume the stipulation also goes to the fact that he did not know it yesterday.

Mr. Haycraft: Oh, yes.

Mr. Weisman: Mr. Haycraft says, "Oh, yes."

And that he did not know, he did not even know that until his mind had been refreshed?

Mr. Haycraft: Certainly. He did not even know who they were yesterday until his memory was refreshed.

Mr. Weisman: I will take that as a part of the stipulation, and with that understanding will proceed. 4287

Examiner Bennett: That will be the understanding.

By Mr. Weisman.

Q. What did you have to do with Department 331 prior to February 1, 1936? A. Nothing.

Q. I cannot hear you. A. I say nothing.

Q. Nothing? A. Nothing.

Q. When you say "nothing," do you mean "nothing"? A. Yes. I had absolutely no responsibility with regard to it or anything to do with it.

Q. Did you learn—I withdraw that— Did you ever go over the list of the people that that department did business with prior to February 1, 1936? A. Did I review the list prior to February, or did I review it before February?

Q. Let us make it all inclusive. Did you review it at any time? A. Yes, I have.

Q. You did? A. Yes.

Q. When and where did you review it? A. Where?

4289 Q. Yes. First. A. I reviewed it with Miss Flynn in my department.

Q. Now, when? A. When?

Q. Yes. A. I cannot attest as to the exact time.

Q. Now, do you know what percentage of your orders for that—of the orders for that department were placed with Guild manufacturers during the year 1935?

Mr. Haycraft: Objected to as indefinite as to what he means by volume or unit: I think it should be specified.

Examiner Bennett: You may add that to it if you desire, otherwise it will be sustained.

Mr. Weisman: I am glad to.

4290 *By Mr. Weisman.*

Q. What percentage of the orders, of the total number of orders? A. I do not know.

Q. Then, you do not know what percentage of the orders for that department were placed with Guild manufacturers during the year 1935 of the total number of orders? A. I do not know.

Q. Do you know what number of orders were placed by that department for that period? A. I do not.

Q. Do you know what number of orders were placed by Guild manufacturers, or with Guild manufacturers by that department for the year 1935? A. I do not know.

Q. Did you ever obtain any information on that point? A. No, I have not.

By Mr. Weisman.

Q. Did you ever make up a list showing the value of orders placed by that department during the year 1935 with all manufacturers? A. No, I did not.

Q. Did you ever make up a list showing the volume of orders placed by that department during the year 1935 with all manufacturers with whom they did business? 4292
A. No, I did not.

Q. Did you ever see such a list, or either of them? A. I never saw such a list.

Q. You never saw one on value? A. No.

Q. You never saw one on volume? A. No.

Q. Do you know whether or not such a list was ever made up? A. Not to my knowledge.

Q. What did you say? A. Not to my knowledge.

Q. Did you ever see a list setting forth the number of manufacturers that you did business with, or with whom business was done during that period in 1935 in that department? A. I do not catch the question. I have no—I am sorry. May I have that question again, please?

Q. Did you ever see a list setting forth the number of 4293
manufacturers that you did business with, or with whom business was done during that period of 1935 in that department? A. I have seen a list of resources for the No. 331 department.

Q. For the year 1935? A. Whether it took in the entire year I cannot attest to that, but I have seen a list of resources that we used.

Q. With regard to the volume of purchases by that department during the year 1935, what percentage was

placed with Guild manufacturers? A. I do not recall. I do not know.

Q. Did you ever know? A. I never knew.

Q. You never knew? A. No.

Q. Prior to February 1 did you know, without regard to the dollar volume, the number of orders that were placed with Guild manufacturers as compared with the number of orders placed with non-Guild manufacturers? A. I have a recollection of approximately 75 per cent.

By Mr. Weisman.

Q. What is your recollection based on? A. It is based
4295 on a paper which I had here—which we had here yesterday in—on information produced by Miss Flynn which I helped her to prepare.

Q. Did that refer to the volume—dollar volume or number of orders? A. That I believe had reference to dollar volume.

Q. What has led you to believe that it referred to dollar volume rather than the number of orders? A. Well, dollar volume, I think that would be the figure which the buyer could possibly know rather than the number of orders. I do not believe they keep account in anywise of the number of orders placed.

Q. Are you referring to the paper that Mr. Haycraft showed you yesterday? A. I am.

Q. Now, aside from that paper you stated before that
4296 you had—that you never saw any other compilation; is that correct, with regard to this subject matter of this present inquiry? A. I am sorry. May I have that question again?

Q. I will reframe it: Now, aside from that paper you stated before that you never saw any compilation; is that correct; with regard to this subject matter of this present inquiry?

Mr. Haycraft: Are you referring to Department 331?

Mr. Weisman: Yes.

The Witness: Now, I do not know just what the question includes.

By Mr. Weisman.

Q. I will ask the question again and include everything. Now, aside from that paper you stated before that you never saw any other compilation with regard to Department 331; is that correct; with regard to this subject matter of the present inquiry? A. That is right.

Q. That is right? A. That is right. 4298

Examiner Bennett: We will have a recess now for ten minutes.

Mr. Weisman: Thank you, Judge.

Examiner Bennett: We are now in recess.

(There was a short recess taken.)

Examiner Bennett: You may proceed.

Mr. Weisman: May we have the last question read?

(Record read.)

By Mr. Weisman.

Q. You have learned, have you not, that Strawbridge & Clothier, in 1933, made it a policy not to purchase copies of original merchandise of members of the Fashion Originators Guild? 4299

Mr. Haycraft: Objected to as not proper cross-examination.

Mr. Weisman: It is entirely proper. I am going to prove the basis of cross-examination on numerous of these statements as to difficulty and so forth, and so on.

Examiner Bennett: Read the question, please.

(Question read.)

Examiner Bennett: I will sustain the objection to that.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Do you know whether or not prior to February 1, 1936, Strawbridge & Clothier had made it a practice not to purchase copies of original creations originated by members of the Fashion Originators Guild?

Mr. Haycraft: Don't answer that yet. In the first place, I think you have misspoken as to the date. The same objection as to the previous ques-
4301 tion.

Examiner Bennett: You are asking about 1936?

Mr. Haycraft: Prior to that.

Examiner Bennett: Prior to that. I am going to let him answer as to that, whether he knows.

The Witness: There was some sort of agreement that our store had with the Fashion Originators Guild to that effect.

By Mr. Weisman.

Q. And as a result of that agreement Strawbridge & Clothier didn't, while that agreement was in effect—sought not to buy copies; isn't that so? A. We attempted not to buy them. We tried to live up to the agreement.

4302 Q. To the agreement? A. That was outlined.

Q. You are a subordinate of Mr. Tily's, are you not? A. Yes.

Q. Are you one of the subordinates that he relied upon when he stated that he was giving his testimony in reliance upon information furnished him by subordinates?

Mr. Haycraft: That is objected to as not within this witness' knowledge.

Mr. Weisman: Well, maybe he knows. I am asking him if he knows.

Examiner Bennett: Well, I will sustain the objection.

Mr. Haycraft: That is Mr. Tily's testimony.

Mr. Weisman: Exception.

I make this offer of proof——

Examiner Bennett: You may ask Mr. Tily, not this witness.

Mr. Weisman: I didn't know we were going to get this kind of subordinate, Judge. All right.

By Mr. Weisman.

Q. As a matter of fact, during the period while this agreement was in existence, in the House Dress Department, they adhered to that refusal to buy copies, knowingly buy copies? A. That is right. 4304

Q. I assume that was because of their agreement? A. Yes.

Q. And I assume that as a subordinate executive in this concern, you adhered to the statement of policy as fixed by your superiors?

Mr. Haycraft: Wait a minute. I object to that.

By Mr. Weisman.

Q. Is that so?

Examiner Bennett: Is there an objection?

Mr. Haycraft: Yes.

Examiner Bennett: Overruled. You may answer. 4305

The Witness: Yes.

By Mr. Weisman.

Q. You were in the court room while Mr. Tily testified; were you not?

Mr. Haycraft: That is objected to.

Examiner Bennett: He may answer.

A. I was here; yes, sir.

By Mr. Weisman.

Q. Did you hear Mr. Tily testify in words or substance that he felt that this policy, when adopted by them, was in his opinion to the benefit of the public, to the manufacturer and to the store?

Mr. Haycraft: That is objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

Examiner Bennett: Yes. Well, I want to see whether he knows anything about that. Now, you may ask him very simply—I will ask him myself and see. There is no use of haggling about this all
4307 day. Did you have any buyers buying goods for any of the departments of Strawbridge & Clothier prior to February, 1936?

The Witness: I took charge of the division February 1, 1936, Judge.

Examiner Bennett: Well, answer my question, please. Did you have any buyers buying goods under your instructions or direction for the firm prior to that time?

The Witness: I did not.

Examiner Bennett: Or any of those departments?

The Witness: I did not.

Examiner Bennett: You did not.

4308 Mr. Weisman: Now, may I pursue——

Examiner Bennett: All right. I don't see what we can get from this witness.

Mr. Weisman: May I pursue the inquiry further?

By Mr. Weisman.

Q. Now, since you took charge of this department, have you, under your supervision, buyers who were engaged in

buying merchandise for the firm of Strawbridge & Clothier, and who, during the period prior to your becoming divisional merchandise manager, placed orders with the Fashion Originators Guild of America? A. Yes.

Q. Members. Now, as to those particular buyers who so placed their orders, did you ever discuss with them the reason that led them to place their orders with members of the Fashion Originators Guild of America? A. Yes.

Q. Now, in these discussions, did they ever tell you in words or substance that the reason they placed their orders when they did with members of the Fashion Originators Guild was, among other things, that they felt they were less likely to obtain copies of merchandise from members 4310
of the Fashion Originators Guild? A. I don't remember any such statement from any of them.

Q. Well, do you think now, with the knowledge that you have obtained as the divisional merchandise manager, that that was one of the reasons? A. I couldn't attest as to what their thoughts were.

Q. You have no thought on that now? A. No.

Q. Did you testify, or did you not, that there were a certain amount of returns? A. Returns to whom?

Q. Non-Guild members. A. Not that I recall.

Q. I guess you are right. I think it was Mr. Taylor.

Examiner Bennett: Mr. Taylor.

By Mr. Weisman. 4311

Q. Well, do you know, as divisional merchandise manager, that returns that are made in a department due to some degree affect the efficiency of that department? A. They do.

Mr. Haycraft: That is objected to, Mr. Examiner, not proper cross-examination.

Examiner Bennett: Well, it is answered and I will let it stand.

Mr. Weisman: What? Thank you.

Examiner Bennett: I will let it stand.

By Mr. Weisman.

Q. As a divisional merchandise manager you have under your control these buyers; isn't that so; of these various departments? A. That is right.

Q. And it is within the buyers' province, is it not, to buy merchandise which will be readily salable; isn't that so? A. Yes.

Q. Now, in your opinion, assuming that an original model is carried by one of your departments at $19.75, and
4313 a copy appears in another store at, let us say, $19.75; does that affect the salability of the original?

Mr. Haycraft: Objected to; irrelevant, immaterial, and not proper cross-examination.

Examiner Bennett: You may answer. Overruled.

The Witness: May I have the question?

(Question read.).

Mr. Haycraft: I offer a further objection, Mr. Examiner, at this time. It assumes a statement of fact which is not in the record.

Mr. Weisman: It doesn't have to be in the record. It is cross-examination. Will you answer? The Court had directed you to answer.

4314 Mr. Haycraft: I would like to have a ruling on my additional objection.

Examiner Bennett: I will let him answer.

A. It might have some influence.

By Mr. Weisman.

Q. I don't care whether it might or whether it might not. You and I know that anything might happen. I am

asking whether or not, with your experience, you believe that it would have a very direct influence. A. Yes, I have known occasions where it has.

Q. Would you then say that the buyers seeking to maintain the sale of their garments would be most likely to go to houses where they knew they could get originals?

Mr. Haycraft: Same objection, Mr. Examiner.

Examiner Bennett: Same ruling.

Mr. Weisman: The Court says you may answer.

A. I don't know what they would be inclined to do in that particular case.

4316

By Mr. Weisman.

Q. Notwithstanding the fact that you are divisional merchandise manager in charge of these departments and responsible for their operations to some degree, that you say that under such circumstances that you don't know what they would be likely to do; is that so? A. That is right.

Q. Now, I understood you to say that the buyers in seeking to replace the Guild houses experienced some difficulty. You remember using those words? A. Yes, I do.

Q. Was that a fact? A. It was, according to their report.

Q. It was only according to their report? Is that the limitation that you want to place on your answer? A. I 4317
am sorry, I didn't get that question.

Q. You answered me that it was according to their report. A. Yes.

Q. And I asked you if you now want to limit your testimony to state that the difficulty was only according to their report, that you had no personal knowledge thereof? A. I stated that my testimony yesterday, that it was according to their report. It was their report back to me.

Q. I see. Now, other than their report did this difficulty manifest itself in any way? A. Only in the way of comparison of figures.

Q. Well, would you say that that difficulty has now been eradicated? A. Not entirely.

Q. Well, almost entirely? A. No.

Q. Well, I call your attention to Commission's Exhibit No. 402, which is a comparative decrease for Department 350.

Mr. Haycraft: I object to it.

By Mr. Weisman.

4319 Q. (Continuing) February 1 to June end, 1936, as against '35, for the same period, and I call your attention to the fact that the claimed decrease for February appears as some 9 per cent. and for March as some 10 per cent., and for April as some 11 per cent., and for May as some 6 per cent., and for June as some 1 per cent., and ask you whether or not the steadily declining decrease isn't some indication to you that the difficulty of replacing the Guild has almost disappeared? A. Well, I wouldn't say one month would be any particular time to compare that.

Q. Now, no, but don't you notice that it starts at 19 and gradually goes down to 1? Now, you stated in answer to my question a moment ago that these figures indicated the difficulty to you? A. That is right.

4320 Q. Now, I say the fact of the steadily declining situation with regard to the figures, or to the amount of the decrease, does not that indicate to you that as time goes on, and as it has gone on, this difficulty has been overcome? A. We have suffered more earlier, I concede that.

Q. And that now— A. That now——

Q. You are straightening it out? A. We are in a certain measure—in a certain measure we are in a better position now than we were at the time that we were red carded.

Q. Yes. And given a reasonable opportunity I assume that you will replace all these Guild manufacturers with non-Guild manufacturers; isn't that so? A. In the meantime we suffer.

Q. No.

Mr. Weisman: I ask that that be stricken out.

By Mr. Weisman.

Q. I said, given a reasonable time you will replace them? A. We don't know whether we will be able to replace them totally or not.

Q. Isn't this some indication to you it is likely that they will be entirely replaced? A. No, it isn't, because—— 4322

Q. All right. That is enough.

Mr. Haycraft: I submit, Mr. Examiner, that the witness ought to be allowed to explain his answer.

Mr. Weisman: I submit that you let me alone while I am examining and stop interrupting me in my examination.

Mr. Haycraft: My objection is an interruption in a proper, legal way, Mr. Examiner.

Examiner Bennett: Have you finished your answer?

The Witness: I have not, sir.

Examiner Bennett: You may finish.

The Witness: May I have the question and part of the answer that I started. 4323

Q. (Record read.) A. —because without interference we may be showing large increases rather than decreases in proportion to the rest of the volume on the floor.

By Mr. Weisman.

Q. In other words, you are now seeking to guess as to what might happen? A. Well, it is problematical in so far as your statement as to the low decrease.

Q. Do you say now that your buyers acting under you have been able to locate proper manufacturers who can make garments comparable to those that you used to purchase from the Guild members? A. I said it was a difficult job.

Q. Well, now, I heard you say that. Now, I am asking you whether or not at this time you state that you cannot get manufacturers to make garments comparable to those originally purchased from Guild members? A. We are having difficulty, yes.

Q. I am not asking you whether you are having difficulty. I am asking you whether you are getting the mer-
4325 chandise that is comparable to that you used to buy from Guild manufacturers? A. Not in the proportion that we would like to buy.

Q. Well, are you getting it? A. We are getting some.

Q. In other words, you now state that these Guild merchants make such good merchandise that during the past six months you have been unable to replace them with other merchants who make good merchandise; is that it? A. That is right.

Q. What does the goodness of this merchandise consist of? A. It consists of an element of fashion, finish, high degree of styling, and the fact that we have been doing business with these houses and have built up a certain following of trade that would expect to find that type of
4326 merchandise in our store at any time they came in to seek such merchandise.

Q. Do you know how dresses are made? A. I don't quite understand you.

Q. Do you know how dresses are made? A. I am not a manufacturer.

Q. Neither am I; neither is the Court. I am asking you, do you know how dresses are made? A. I never watched their operation.

Q. Have you got anything in your mind which operates to tell you how a dress is made? A. No.

Q. In other words, your mind is a complete and total blank on the method of manufacturing dresses?

Mr. Haycraft: That is objected to.

Mr. Weisman: I submit it is a perfectly proper question.

Examiner Bennett: All right. I will let him answer.

By Mr. Weisman:

Q. The Court says you may answer. A. I do not know how dresses are made. 4328

Q. Do you state the Guild manufacturers, aside from the fashion and styling, do make a better dress than anybody else? A. By comparison, they do.

Q. Is this better manufacture in the making of the garment? A. That is one important phase, the detail.

Q. Do these manufacturers, when they send in a garment to you, have their name in the garment? A. I don't quite understand the question. May I have the question?

Q. Well, is there anything in the garment which identifies the maker of the garments when it is placed on sale with your department store? A. Sometimes there is.

Q. Never mind about the sometimes. You mean to say that your garments carry the name in them of the manufacturer? A. No, not at all. 4329

Q. How would a woman know how the garment was manufactured? A. She——

Q. Or by whom? A. She wouldn't know, only by comparison.

Q. Comparison with what? A. With her experience in purchasing dresses.

Q. In other words, the Guild manufacturers do a good job, you say, in their manufacture? A. Yes, that is an important thing.

Q. And they do such a good job that the woman has become used to that good job? A. Yes.

Q. And you are anxious to see that your customers get the best possible job in the dresses they purchase from you? A. That and other things are considered.

Q. What other things are considered? A. The fit of the garment.

Q. Well, do the Guild manufacturers give you a good fit? A. Yes.

Q. What else? A. Finish.

Q. Do they give you good finish? A. They do.

Q. What else? A. Fabric.

4331 Q. They give you good fabric? A. Good fabric and new fabrics.

Q. Do they give you those? A. Yes.

Q. These are all things that are highly desirable? A. Yes, they are.

Q. And they are things that you are constantly seeking to give to your customers? A Yes.

Q. Well, if that is so, will you tell us why in this department, out of the hundreds of people you did business with, you only did business with twenty-six Guild manufacturers. A. Well, the Guild manufacturers that we purchased from, possibly.

Q. Not possibly, what is the fact? A. May have been in proportion to the sales—the purchases may have been greater than the total of the other 75 per cent. purchased

4332 from other manufacturers on the market.

Q. You say that may have been. I want to know why you did not buy all of your merchandise from people making such good stuff? A. We cannot possibly, that may have been a different thing. We could not possibly, they may have not made a certain type that we would want to sell. There are also good makers who are not members of the Guild.

Q. What is the ratio, three to one? A. No, it is not to my knowledge, I do not think so.

Q. What do you say about the ratio? A. I do not know.

Q. You honestly do not know? A. I honestly do not know.

Q. Now, let us come to this matter of fashion. You used the word fashion and you said that the things that went into it were, first, fashion; and then you said finish and then you said high degree of styling; do you differentiate between fashion and high degree of styling? A. No.

Q. They are one and the same? A. Yes.

Q. What do you mean by high degree of styling? A. High degree of styling is that particular styling that has 4334
or which has, I would say, new ideas, new lines that are put into a garment, the designer's thoughts on one particular model.

Q. You mean, do you not, that the members of the Guild made available to you more style originals; is that what you mean? A. No, not necessarily originals.

Q. What do you mean when you say "newer." A. Newer—new touches in my estimation would be something new, possibly new trimmings, the adaptation of some creation.

Q. Now, how much—now, how do these Guild manufacturers, in your opinion, get this high degree of styling, is it when they join the Guild that they get it; is it something the Guild gives them? A. No, I do not think so.

Q. What do you think? A. I think that they get it 4335
through the form of their designers and the members of their designing staffs, I think that is where they get it from, those designing staffs.

Q. In other words, it is your opinion that these designing staffs maintained by the Guild members are better designing staffs than those which are maintained by people who are without of the Guild? A. In many instances I

would say that the designers that the Guild manufacturers employ do interpret fashions and create numbers or reconvert adaptations in a more salable way, yes.

Q. Do you know whether or not that list of manufacturers who are not in the Guild do not employ—well, let's make it more general than that. Do you know whether or not lots of manufacturers who are not in the Guild do not employ designers at all; did you ever hear of that? A. Yes, I have.

Q. Then from time to time they go around the market and copy what looks like a hot number; did you ever hear of that? A. Yes.

4337 Mr. Haycraft: I object to that as incompetent, immaterial and irrelevant and not proper cross-examination.

Mr. Weisman: I submit it is entirely proper in view of his previous testimony.

Mr. Haycraft: It may be on a cross-examination, but it certainly is not on his direct.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. And I offer to prove that the answer would have been in the affirmative.

Examiner Bennett: We ought to have—I think there should be a limit on this.

Mr. Weisman: The limit should be that the witness should not have been put on if he does not

4338 know anything.

By Mr. Weisman.

Q. Now, what is the total volume that will be done—that was done in Department No. 30—Department No. 350 for the year 1935? A. I beg your pardon.

Q. Do you know that? A. Oh, I do not recall.

Q. Did you ever know? A. I have seen the figures.

Q. What is your idea; what is your best recollection? A. I do not know. I would not even guess.

Q. Now, how many manufacturers would you say you do business with in Department No. 350 during the year 1935? A. I do not know offhand.

Q. You do not know? A. No.

Q. Now, I know you do not know e[illegible], but will you give us your best opinion, A. I will not guess.

Q. You will not guess? A. No.

Q. I want your best opinion, you are in charge of this department.

Mr. Haycraft: I object to his best opinion.

Mr. Weisman: Well, we will get away from that, and I will ask for his best opinion, and we will have 4340
to take it, I suppose.

Mr. Haycraft: I object to his opinion.

Mr. Weisman: Your Honor, I think we should be allowed to have that.

Mr. Haycraft: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Is Department 350 comparable to Department 331? Perhaps we can get at it this way. A. In which way?

Q. In the number of manufacturers that you dealt with in that department.

Mr. Haycraft: That is objected to. 4341

Examiner Bennett: I will let the witness answer that.

A. I would say that the number of resources that that department used would be less in comparison to No. 331.

By Mr. Weisman.

Q. How much less would you say? A. I have no idea.

Q. You have no idea? A. No.

Q. Would you say that you only do business with about seventy-five manufacturers.

Mr. Haycraft: I object to that.

A. I do not know.

Mr. Haycraft: I object. He said he did not know.

Examiner Bennett: I will sustain it. It is too indefinite. You are not getting out anything that has any relevancy in the record.

Mr. Weisman: I submit if I am not permitted to examine him, of course I cannot get it out.

4343

Examiner Bennett: It has already been demonstrated that you are not getting anything that is at all tangible out of this witness on that particular point. Why clutter up the record with a lot of stuff of that character.

Mr. Weisman: I want to prove that this witness does not know whether they do business in that Department with seventy-five or 750 manufacturers.

Examiner Bennett: It appears already that he does not know the number. There is no need of that exaggeration.

Mr. Weisman: I do not know that it is exaggeration. I would not be surprised if they did business with 250.

4344

Examiner Bennett: 250 is not 750.

Mr. Weisman: I will amend that to the figure of 250.

Examiner Bennett: I have ruled, and I am going to sustain that ruling. There is no use of further discussion on this matter.

Mr. Weisman: May I have an exception? May I——

Examiner Bennett: You may do anything you choose within the rules of practice.

Mr. Weisman: Thank you.

By Mr. Weisman.

Q. Did you see a list of the manufacturers that you did business with during the year 1935 in Department No. 350? A. I have seen a list at one time or other.

Q. You have seen such a list? A. I have.

Q. Where did you see that list? A. In my office.

Q. In your office? A. Yes.

Q. Who gave you that list? A. It was furnished by the buyer. 4346

Q. By the buyer? A. Yes.

Q. Under what circumstances was it furnished by the buyer? A. To extract the information which was placed on this paper that you presented—that was presented in evidence yesterday.

Q. Where is that list? A. I do not know where it is now.

Q. Did you destroy it? A. What?

Q. Did you ever destroy it? A. I do not know whether it is destroyed or not.

Q. Did you have any reason for destroying it? A. Absolutely none.

Q. You were not afraid to keep it? A. No.

Q. Will you during the lunch hour make a search to see if you can locate that list? A. I will. I will promise to do that. 4347

Q. If you locate it then will you look at it and see how many manufacturers in total you did business with in that department? A. I will do so. I would like to make a note of it so I will not forget it.

Q. Why, certainly, I will do that, and I will not only do that, but I will give you a piece of paper on which to

make the notation. A. That is all right. I have something here on which I can make that notation.

Q. But, in any event, you are certain that at this particular time you have no present knowledge as to the number, the total number of manufacturers that you had done business with in the year 1935, in this Department No. 350? A. May I have that question again?

Mr. Haycraft: Yes, I think the witness should be allowed to hear the question.

Mr. Weisman: Certainly. Will your Honor permit it to be read?

4349 Examiner Bennett: The question may be read.

Q. (Question read.) A. I will promise to look that record up for you. I have promised to do that.

By Mr. Weisman.

Q. I did not ask you that. I asked you if at the present time you had any such knowledge? A. I would tell you if I did.

Q. The answer is "No"? A. "No."

Q. Well, say so. A. No.

Mr. Haycraft: He said that once before.

Mr. Weisman: Now, Mr. Haycraft——

By Mr. Weisman.

4350 Q. Now, what priced merchandise do you sell in that department? A. What department?

Q. 350? A. 350.

Q. Yes. A. We buy merchandise to retail at $10.75 and up.

Q. What do you pay for it? A. $10.75 and up.

Q. You gave us yesterday a statement of people who were members of the Guild from whom that department

purchased merchandise prior to your advent as divisional merchandise manager; do you remember that? A. At the time of the red carding?

Q. Yes. A. Yes.

Q. That is true? A. Yes.

Q. How long back did you go when you got that list of names up? A. I do not remember. It was a list that at that time we were using.

Q. As a matter of fact, you covered a three-year period, did you not?

Mr. Haycraft: One year.

A. I do not know whether that would take in three years 4352
or not. I am not certain.

By Mr. Weisman.

Q. What did it take in? You were asked if, having refreshed your recollection, will you testify for the record the names of the manufacturers that you recognize as resources for Department 350. You may look at the piece of paper and you then looked at the piece of paper that Mr. Haycraft handed you, and then you gave some names. A. Yes.

Q. Do you know whether those names covered the period from June, 1933, to February, 1936? A. I do not. That, again, that question, if I remember it, pertained to the time of the red carding. 4353

Q. What? A. That question pertaining to the time of the red carding.

Q. You mean at that time that you had orders outstanding with those people that you gave? A. I do not believe with all of them, but they were resources that that department was using in purchasing merchandise from at one particular time.

Q. What particular time? A. That particular time I do not believe that all of them were, but they were resources that that department was using in purchasing merchandise from at that time, particular time. Let me make that clear: At that particular time those departments were purchasing—that department was purchasing merchandise from those particular resources at that time. At that time is what I am referring to.

Q. Oh, I see. How recently to that time had they purchased merchandise; that is what I want to know? A. How recently?

Q. Yes. A. I do not know.

4355 Q. You do not know? A. Yes.

Q. Do you know when was the last time that your store purchased merchandise from Milton Altmark? A. No.

Q. Do you know whether—did you know yesterday when you testified? A. At the time of the red carding we were using that resource.

Q. When you say you were using that resource, what do you mean? A. What is that?

Q. When you say you were using that resource, what did you mean? A. I believe the list that we submitted will show——

Q. I do not care about the list that you submitted. I want you to listen to my question. I want to know from you when you say you were using those resources exactly what you mean? A. I will attest to the fact that in 1935

4356 in reference to this remark——

Q. What is that? A. I am attesting to the fact in 1935 in reference to that remark.

Q. In other words, you say that some time during the year 1935 you purchased merchandise from Milton Altmark, Inc.; is that it? A. That is right.

Q. Is that right? A. Yes.

Q. That some time during the year 1935 there was purchased from Capri Frocks some merchandise? A. Yes.

Q. That some time during the year 1935 there was purchased from Frank Starr-Friedman some merchandise? A. Yes.

Q. That some time during the year 1935 there was purchased from Weinstein & Entin some merchandise? A. Yes.

Q. That some time during the year 1935 there was purchased from A. Goodman some merchandise? A. Yes, sir.

Q. That some time during the year 1935 there was purchased from Max Heit some merchandise? A. Yes.

Q. That some time during the year 1935 there was purchased from Lipman Brothers some merchandise? A. Yes, sir.

4358

Q. That some time during the year 1935 there was purchased from Perlas Levenson some merchandise? A. Yes, sir.

Q. That some time during the year 1935 there was purchased from Schultz & Zucker some merchandise? A. Yes, sir.

Q. During the year 1935 this department only purchased merchandise from the ten Guild manufacturers altogether? A. That is all that I have a record of at the time.

Q. If that is a record of all you have; is that correct? A. That is all—we will say.

Q. That is all that were used as resources; that you purchased merchandise from; is that so? A. Yes, sir.

Q. During that time do you know how many non-Guild manufacturers you purchased merchandise from? A. No. 4359

Q. Do you know the type of garments——

Mr. Weisman: Off the record. Maybe we can save a little time by working up a stipulation here.

Mr. Haycraft: I am glad to entertain such a proposition.

(There was a discussion off the record.)

Examiner Bennett: Back on the record.

Mr. Weisman: It is stipulated by the Attorney for the Commission, that with regard to the names of the resources given by this witness, Samuel J. Chance, as being resources of Department No. 350, as set forth by him on page 2096 of the record, being Milton Altmark, Capri Frocks, Frank Starr-Friedlander, Goldston & Entin, A. Goodman, Max Heit, Lipman Brothers, Perlas Levenson, Schulte Zucker, that this witness does not know the type of merchandise manufactured by some firms, nor the price range at which their merchandise is sold except in so far as Lipman Brothers is concerned with regard

4361 to that manufacturer, he does know that they do make a four-way suit which sells at a wholesale price of $10.75.

The Witness: That is right.

Mr. Haycraft: I agree to that stipulation.

Examiner Bennett: The stipulation is received.

By Mr. Weisman.

Q. That is your knowledge, is it? A. Yes, sir.

Q. Have you any idea of the total business done in Department 350 during the period February 1, 1936, to June 30, 1936? A. I do not.

Q. This department is under your supervision; and was within the time that you actually are in control of it?. A.

4362 I do not understand your question.

Q. This department is under your supervision; and this is within the time that you have been actively in control of it; is that true? A. That is true.

Q. Notwithstanding that, you would say to us that you would have no idea whatsoever as to the volume that you do in that department? A. I have not the slightest idea as to that.

Q. Give us your opinion? A. I would not even have an opinion.

Mr. Haycraft: I object to an opinion.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. And I offer to show that the witness has no idea whatever.

Examiner Bennett: You may ask him the facts. You are asking him something else which is not material, in my opinion.

Mr. Weisman: May I call for his recollection, then?

Examiner Bennett: Yes, you may call for his recollection. 4364

By Mr. Weisman.

Q. Have you any recollection? A. I have not.

Q. You have not? A. I have not.

Q. Did you ever know what the volume was that you were doing in that department? A. Yes, sir; I have seen figures constantly.

Q. You have seen them constantly. When did you last see the figures? A. I may have—the last that I recall is possibly around the end of that period.

Q. That is, the June 30, 1936, you say you saw some figures showing the total that you did in that department, or that you had done in that department? A. It may have been June 30, it may have been the early part of July. 4365

Q. The early part of July? A. Yes, sir.

Q. Did you see any in the early part of August? A. Yes, sir.

Q. Do you not get monthly figures of that department? A. I do.

Q. You do? A. Yes.

Q. And you, as divisional merchandise manager—when did you see those figures in August, how recently—how re-

cently? A. I am sorry. I have not seen any figures for August yet. The figures have not been submitted to me as yet.

Q. Have you any idea what the Department No. 350 did in the period February 1, 1935—between February 1, 1935, and June 30, 1935? A. I do not know.

Q. Did you ever see any figures as to that? A. Yes. I saw the comparative figures.

Q. Do you have any recollection whatsoever? A. None whatsoever.

Q. And as to the immediate period; that is, February 1, 1936 to June 30, 1936, you are likewise without any recol-

4367 lection as to the volume of business done therein? A. I saw the figures in order to prepare the slip which I had; but I do not remember the total dollar volume.

Q. What is the slip that you refer to?. A. To the decrease that that department had for this year in comparison with 1935.

Q. You mean, Exhibit No. 402? A. That is right.

Q. Right? A. Right.

Q. If you never have seen the figures for 1935, as you have just testified, as you have just testified you have not, how can you testify as to the comparative decrease; will you tell me that?

Mr. Haycraft: That is objected to as contrary to the witness' testimony.

4368 Mr. Weisman: Let us see whether it is or not. I ask that that question and that answer be read containing that so that I may have those facts before your Honor in passing upon this matter.

Examiner Bennett: The witness testified that he has seen the figures.

Mr. Haycraft: He did not say that he had not seen them.

Mr. Weisman: I think it would be better to have those particular questions read.

(Questions and answers read as follows: "Q. Have you any idea what the Department No. 350 did in the period February 1, 1935—between February 1, 1935, and June 30, 1935? A. I do not know. Q. Did you ever see any figures as to that? A. Yes, I saw the comparative figures. Q. Do you have any recollection whatsoever? A. None whatsoever.")

Examiner Bennett: You will see from that that he has some information with regard to that. Furthermore, the witness has systematically disclosed that he does not remember figures. We are fed up on that. We have demonstrated beyond any 4370
possible doubt that he does not remember figures even for a month or for a few days. But he has testified that he has seen the figures and has used them in certain calculations. What else can you get from him on that?

Mr. Weisman: We will have to see, your Honor.

By Mr. Weisman.

Q. What is your opinion as to the volume done by Strawbridge & Clothier in Department 350 during the month of June, 1936?

Mr. Haycraft: I object to any opinion.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. I offer to prove that 4371
he has absolutely no opinion whatsoever.

Examiner Bennett: There is no foundation for the opinion.

Mr. Weisman: He has testified on direct testimony that that department is under his supervision.

Examiner Bennett: You are asking for a different kind of thing now.

By Mr. Weisman.

Q. Is Department 350 under your direct supervision? A. Yes.

Q. That is one of the departments for which you are responsible for its sales and its profits? A. That is right.

Examiner Bennett: I will sustain the objection, and I may state for your information I am sustaining the objection because of your failure, technically, as a lawyer, to make the proper foundation for the question you are asking.

Mr. Weisman: I am making it now.

4373 Examiner Bennett: It is now 12.35. We will take an adjournment until 2 o'clock. Please be on hand promptly.

(Whereupon, at 12.35 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION.

Examiner Bennett: You may resume.

Mr. Weisman: Thank you. May I have the last question?

(The last question was read.)

4374 *By Mr. Weisman.*

Q. Is it not? A. Yes.

Q. Notwithstanding that, you state that you don't know the total volume of business done during the elapsed five months commencing February of this year? A. That is right. I don't remember.

Q. Now, I asked you before lunch to make a list of the total number of manufacturers with whom Department 350 did business.

Mr. Haycraft: That is objected to, if your Honor please.

Q. (Continuing) And you stated to me that you have brought such a list with you; did you not? A. Yes.

Mr. Haycraft: Just a minute.

Q. And have you got it with you? A. Yes.

Q. Will you please look at—will that list refresh your recollection as to the number of resources in total that were availed of by that department prior to February 1, 1936?

Mr. Haycraft: Objected to unless it is confined 4376
to the year 1935.

Examiner Bennett: That is in February, 1936?

Mr. Weisman: Prior to February, 1936.

Examiner Bennett: All right.

Mr. Weisman: You may answer.

Examiner Bennett: You may answer. It is understood that it covers '35?

Mr. Weisman: This is the——

The Witness: Yes. May I say something? I understood that Mr. Weisman wished a list stating the total number of non-Guild resources and the total number of Guild resources that this department used in the year 1935; is that correct?

4377

By Mr. Weisman.

Q. I asked you for the total number of non-Guild resources that you used in the year 1935. Now, have you got that? A. I have that on here, in with the information of the Guild resources.

Q. Wait a minute. What is that number? A. 30.

Q. 30. Yesterday you testified as to the number of Guild resources that were used; did you not? A. At the time of the red carding?

Q. Yes. A. That is right.

Q. How many was that total? A. Whatever number appeared on that sheet.

Q. Ten? A. Whatever they were.

Q. Have you no recollection of what you testified to yesterday? A. I read it fron. a sheet of paper.

Q. In other words, you weren't testifying to anything other than that which you were able to read; is that correct? A. That is right.

Q. Now, by the way, what is a four-way suit? A. A four-way suit is a suit consisting of four individual pieces or garments that can be utilized and interchanged to make
4379 up four different distinct types, whether in color or fabric.

Q. Do you know how many manufacturers were engaged in the manufacture of four-way suits in the month of February, 1936? A. No.

Q. Don't you know that the four-way suit was a very popular suit and was made by a great number of manufacturers during that period? A. I have heard of some manufacturers making that same suit.

Q. As a matter of fact, the four-way suit in February, 1936, had a great popularity; didn't it? A. Yes, it did.

Q. And in response to that great popularity a large number of manufacturers commenced to manufacture suits of that kind; isn't that so? A. Yes.

Q. As a matter of fact, there was a glut on the market of four-way suits in the month of March, 1936; isn't that
4380 so? A. I didn't get your question. I am sorry.

Q. Do you know the meaning of the word "glut"? A. No.

Q. Well, maybe that is why you didn't get my question. As a matter of fact, the popularity of this four-way suit during the months of January and February, 1936, was so great that a great number of manufacturers proceeded to make up and sell, make up for sale four-way suits; isn't that so?

Mr. Haycraft: Objected to as too indefinite, this great number.

Mr. Weisman: Well, he has testified all the time to great numbers.

Mr. Haycraft: I object to the question.

Examiner Bennett: Overruled.

Mr. Weisman: I submit it is a perfectly proper question.

Examiner Bennett: Overruled. Go ahead.

By Mr. Weisman.

Q. The Judge says you shall answer. A. Yes.

Q. Don't you know that as a result of a large number of 4382
people who engaged in the manufacture of that four-way suit that there was an overproduction of four-way suits so that the market or the sale of them are greatly depressed by the overproduction; isn't that so? A. I don't know that.

Q. What do you mean when you say you don't know? A. Of course, we had difficulty getting a suit which to our estimation was comparable to the original model which was denied us in February.

Q. Do you mean that the four-way suit produced by Lipman Brothers was of a particular design? A. No, but it sold because of the suit itself.

Q. In other words, it happened that Lipman Brothers made up a good suit? A. That is right.

Q. There wasn't anything particularly new about a four- 4383
way suit; was there? A. Well, there are many four-way suits made.

Q. Yes. And there wasn't any particular monopoly of design in the making of four-way suits; was there? A. It depends on what you consider monopoly of design.

Q. I mean anybody was free to make four-way suits? There was no patent or patent right or closing of the right to make four-way suits? A. Not to my knowledge.

Q. And if there were, it would certainly be to your knowledge in the performance of your duties; wouldn't it? A. I have seen many of them shown to me.

Q. Certainly. That is what I wanted to bring out. A. Yes.

Q. I want your best testimony on that. Now, when this four-way suit came out, was the delivery of it, the time of the delivery of it important? A. Yes.

Q. If you didn't get it when ordered, would you take it? A. It depended on how long after the date of delivery was specified on the order.

Q. Well, the ready-to-wear market is a quickly changing
4385 market in ladies' dresses; isn't it? A. Yes.

Q. In other words, if you don't get things in timely, generally, not particularly, you don't want them? You want them when you can sell them; isn't that so? A. That is right.

Q. This four-way suit had a particular vogue or demand for it during the month of January, 1936, isn't that so? A. That is right.

Q. Now, if Lipman Brothers offered to deliver that suit to you at a date subsequent to the time that your order called for delivery, would that be good delivery under the orders? A. It depended upon the particular garment and the buyer's judgment whether that could be sold at the time they specified delivery for it.

Q. Well, now, as a matter of fact, did not Lipman
4386 Brothers deliver all of the four-way suits that you ordered? A. They delivered those on order prior to our red carding.

Q. Well, let us see. These orders—did you place them subsequent to the red carding or before? A. We could not place any orders subsequent to our red carding.

Q. So, as a matter of fact, Lipman Brothers did deliver all of the suits that you had ordered? A. That is right.

Mr. Weisman: May I have Exhibit No.—it is right here.

By Mr. Weisman.

Q. Now, you identified an exhibit, namely, No. 401, Commission's Exhibit 401, which referred to Lipman Brothers; is that so? A. May I see it, please?

Q. Yes. I hand it to you now. Is that the one? A. Yes.

Q. Now, this refers to a number of garments particularly about seventy-one garments, I believe it is 8, 16, 22, and 18; as a matter of fact, when you testified yesterday did you intend to give the impression that Lipman 4388
Brothers refused to deliver any of those garments? A. I do not believe I did.

Q. As a matter of fact, did not Lipman Brothers deliver every one of the garments referred to on that exhibit?

Mr. Haycraft: That is what the witness testified on his previous examination.

Mr. Weisman: I object to this constant interjection on the part of Commission's counsel. I believe it is highly improper.

Examiner Bennett: Do you want to check the record in that regard?

Mr. Weisman: No. I will get it from the witness now. I believe it will be more readily obtained in that manner. 4389

By Mr. Weisman.

Q. As a matter of fact, did not Lipman Brothers deliver every one of the garments referred to in Commission's Exhibit No. 401? A. I did say that yesterday.

Q. Are you sure you told us that yestrday? A. I am.

Q. Well, let us see whether you did or you did not.

(Mr. Taylor picked up the exhibit from the desk.)

Mr. Weisman: Mr. Taylor, may I have the exhibits here that you have just taken away? I want to use it in interrogating the witness.

Mr. Taylor: Yes. Here it is (handing the document to counsel).

Mr. Weisman: Well, I do not seem to be able to find the place in the testimony right now. In order to save time I will continue with the examination.

By Mr. Weisman.

Q. Irrespective of that, there is no doubt, is there, that
4391 as to each and every garment shown on Commission's Exhibit 401, Lipman Brothers did deliver them and you did receive them? A. That is right.

Q. How many numbers of an average garment do you carry in stock in Department No. 350? A. I do not quite get the question. I would like for you to read that, if you please.

Mr. Weisman: I request that the reporter read the question.

Examiner Bennett: You may read it.

Q. (Question read.) A. You mean by that, single pieces of the garment?

Q. Yes. A. That depends upon the time of the year and
4392 the type of garment.

Q. Take the month of January. A. What type of garment or dress, a daytime dress, an evening dress, a wedding gown, or what?

Q. Let us say a four-way suit. You knew what I was getting at, did you not? A. Right. That would be based on the experience we have had in the previous years with that particular type of garment.

Q. Well, now, let us see. Did you have any experience in purchasing this four-way suit? A. I, personally, did not, but the buyer did have experience in the purchasing of four-way suits, the buyer in that department.

Q. Well, now, some of this merchandise was brought in in February, of these four-way suits? A. I do not know what they were.

Q. What do you mean you do not know what they were? A. I do not know whether they were brought in in January or February.

Q. Look at Commission's Exhibit 401 and see if that will refresh your recollection. A. It does not have any statement here as to the receipt of the merchandise. It 4394
states the date the order was placed and the date of delivery.

Q. When the date of delivery is fixed, what is your experience; are they delivered generally within a reasonable time? A. Yes, generally.

Q. So that if the date of delivery is fixed as January 31, that will ordinarily mean that the merchandise will be delivered either on January 31 or within four or five days thereafter; is that so? A. It could be sooner.

Q. Is it your statement that these were delivered sooner? A. It is not my statement. I am not certain as to the date of the receipt of the merchandise.

Q. If you got these pieces in about January 1, you do not want us to believe—January 31, you do not want us to 4395
believe they moved out the same day that they got in, do you? A. I did not say that.

Q. So, you must have had them in your place of business around February 1? A. Some suits were in stock around February 1; the date they were received from the manufacturer, however, I do not know.

Q. What I want to know is, in the conduct of this business, what is the average number of a particular type of garment that you generally carry in stock? A. The gar-

ment generally stocked, that type of garment, I would say that the average for that department might be about six to eight pieces.

Q. Six to eight pieces? A. Yes, sir.

Q. Suppose you had more than six to eight pieces, would you deem yourself overstocked? A. Not necessarily.

Q. I know all about "not necessarily." I want generally. A. What?

Q. I want generally. A. It depended upon the demand at the time for that particular type of dress.

Q. You have a great recollection about this particular four-way suit, do you? A. Yes.

4397 Q. How many of those do you think you ought to carry in stock? A. It depended upon the selling activities of that number.

Q. Did that particular number have a great selling activity? A. I should think that if it were re-ordered——

Q. No, no, no, no. Did that number have a great selling activity? A. Yes. It did.

Q. Now, bearing in mind the selling activity that that number had, the popularity that you ascribed to it, what is your opinion of the number of pieces that you normally ought to have in stock, or should have in stock? A. Well, that could vary.

Q. We all know it could vary. Anything can vary, almost. We want your opinion as to the number that you

4398 normally should, or ought to have in stock, with all of your knowledge as you testified to concerning this particular garment both on your direct examination and upon your cross-examination. A. If I had a fast selling book to determine that, on the experience of selling, I could state the figure, but I am not certain and I cannot state as to that particular garment in the absence of that fast selling book.

Q. In other words, you said, and you now state, as division merchandise manager of this department, Depart-

ment No. 350, that, notwithstanding the fact that you testified it was a fast selling number, that it had some popularity, you do not at this time know, or will not say, as to the number of pieces you should have in stock normally? A. I have stated the facts that I do know.

Q. You do not know? A. I have stated the facts that I do know.

Q. I want to know whether or not you know what the average amount of pieces you ought to have in stock of a fast selling popular number——

Mr. Haycraft: I object.

A. There is no determinative figure. 4400

By Mr. Weisman.

Q. What is the best opinion you have as to that? A. I would not want—I will not give you an opinion on that.

Q. Oh, you will not? A. No.

Examiner Bennett: The objection is overruled. The witness should wait until the Examiner has ruled.

Mr. Weisman: I think so myself, your Honor.

By Mr. Weisman.

Q. Do you not, in the practice of your business as divisional merchandise manager of the 350 Department, take charge of the merchandising of this department? A. I do, yes. 4401

Q. As part of the merchandising of the department, is it a part of your duties to see if you are not overstocked with a particular number? A. Yes.

Q. In order to see if you are not overstocked do you not have to know what is the fair and usual and normal stock for that number? A. Yes.

Q. I am asking you with regard to such a number as that, what was the fair and normal stock that you should have on hand? A. Yes, you are asking me a general question, now.

Q. Not a general question, but as to this particular item. A. I cannot answer as to that particular item. You are asking me generally.

Q. Can you answer as to any particular garment? A. I would have to know the selling activities of that number to determine the number——

Q. (Interposing) And do you——

4403 Mr. Haycraft (interposing): I object to counsel interrupting the witness before he has completed his answer.

A. —number to re-order——

Mr. Haycraft: I insist that the witness be allowed to answer the question.

Mr. Weisman: I did not think I had interrupted him. I have no desire to do so.

Examiner Bennett: Go ahead.

A. —number to re-order or the number that should be on hand and in stock.

By Mr. Weisman.

4404 Q. Yesterday, on your direct examination, both in answer to questions propounded to you by Mr. Haycraft, counsel for the Commission, and in answer to some questions propounded to you by the Judge in charge of the proceedings, didn't you state that you knew of the selling activity of this four-way suit? A. I said I knew of the selling activity according to the orders placed.

Q. All right. Now, with the knowledge of that selling activity, with your knowledge of its popularity, what I

want to know from you is, what, in your present opinion, is the normal amount of garments of that particular type that you would regularly carry in stock in the operation of this department? A. I couldn't answer that question.

Q. What is that? A. I couldn't answer that question.

Q. You mean, you can't answer it because you don't know what the proper answer is? A. No, because I have nothing to guide me by.

Q. But you have to be guided by your statement made yesterday that you knew it was a popular and fair selling number? A. Yes, that is the statement I made.

Q. Now, in view of the fact that you knew about this being a popular and fast selling number, could you tell 4406
us what is the fair number of items or pieces of a popular or fast-selling number that you carry in stock? A. I couldn't tell you that.

Q. All right. Have you any idea of the comparative volume of sales as between Departments 331 and 350? A. I am sorry. May I have that question?

Q. (Question read.) A. What do you mean by comparative sales?

Q. Well, do you sell more in 350 than you do in 331, or do they run about the same, or do they run less? A. 350, to my recollection, is a little less than 331.

Q. What is that? A. Is a little less than 331.

Q. When you say a little less, what do you mean by a little less? A. I don't know the exact figure.

Q. Why don't you say a great deal less? A. Because I 4407
know it is a little less.

Q. Well, the testimony that you have given, or that is in the record, is that the approximate amount of business averaged, if the extensions made are correct, was $15,000 per month in Department 331 for the period February 1, 1936, to June 30. Now, if that is so, when you say a little less in 350, would you say it is $14,000 a month? A. I wouldn't say.

Q. What do you mean by a little? How little or how much? A. I don't recall.

Q. Do you mean that—I don't care whether you recall it. I want to get your best opinion as a manager. A. I won't give you my best opinion.

Mr. Haycraft: I object.

By Mr. Weisman.

Q. What?

Mr. Haycraft: I object to opinions, Mr. Examiner.

4409

By Mr. Weisman.

Q. Do you mean to say that with both of these——

Mr. Haycraft: I ask for a ruling on that objection.

Examiner Bennett: Well, he isn't giving his opinion. He said he wouldn't.

By Mr. Weisman.

Q. Do you mean to say that as manager of both of these departments, with both of them under your direct supervision and control, you cannot give us any opinion as to the comparative volume of sales between those two departments? A. I have given you my opinion.

4410

Q. What is that? A. A little less.

Q. Well, now, when you say a little less, you mean about $500 less per month? A. I don't know how much in dollars or thousands or any other figure.

Q. I see. By the way, can you give me any idea of your turnover in your various departments, 331? A. I have seen the figures, but I don't recall them.

Q. Well, let's see. When you merchandise a department, part of your duty as merchandising manager is to see that your stock turns-over? A. That is right.

Q. By turnover of stock we mean that if you get in a certain number of thousands of dollars per month, that you have got to move that out within a certain reasonable time? A. (Witness nods head affirmatively.)

Q. Is that not so? A. That is correct.

Q. Now, as merchandising manager of your various departments, it is part of your duty, is it not, to watch your turnover; isn't that so? A. Yes.

Q. Because lack of turnover results in mark-downs; isn't that so? A. That is right. 4412

Q. In other words, if a garment comes in on the first of the month, and it isn't sold within a certain period thereafter, then you take a mark-down on it in an effort to move it out; isn't that so? A. Depends upon the method the store uses to operate.

Q. I don't mean—I mean your store. A. Well, any particular time—I refuse to state. I don't think that is a method of operation—that operation could vary at different times of the year. You mentioned a specific time.

Q. I didn't mention any specific time. A. You did say a month.

Q. Well, within any period of time. A. There is a determinative figure.

Q. What is that determinative figure? A. As to the 4413
particular types.

Q. Let us suggest the Department 350. In the Department 350 what is your turn-over? A. The actual turnover we get, I do not remember.

Q. What is your best recollection? A. I wouldn't hazard a guess.

Q. You mean to say that as merchandising manager you do not know the turnover in this department? A. That is right, as it is to-day, I do not know it.

Q. Do you know as it was any time? A. I do not remember it.

Q. Well, did you ever know it? A. I have seen the figures, yes.

Q. I don't care about the exact figures. You are merchandising this department and I want to know from you what is your opinion as to its turnover.

Mr. Haycraft: I object to the opinion.

Mr. Weisman: He told me he can't give me the figures. Now, I am entitled to his opinion.

Examiner Bennett: He is entitled to the best recollection, if he has any. You haven't laid any
4415 foundation for an opinion. I will sustain the objection.

Mr. Weisman: I am now going to try to make a foundation for an opinion.

By Mr. Weisman.

Q. In the course of the performance of your duty as merchandise manager, you are in charge of the turnover of this department; isn't that so? A. Yes, sir.

Q. And you are responsible to see that your turnover is such that it will be commensurate with profit earning; isn't that so? A. I don't quite understand that question. I am sorry.

Q. Perhaps you don't. I will try it in a more simple
4416 fashion. A. Thank you.

Q. To some degree the profits of your department is dependent upon your ability to turn over your stock? A. That is one factor, yes.

Q. And in the performance of your duties, you do keep track and record in some fashion of the turnover of this department? A. Those figures are submitted to us.

Q. And you constantly see them from time to time as they are submitted? A. From time to time; yes, sir.

Q. When, in your opinion, there isn't sufficient speed in the turnover, you examine the facts with regard to that lack of speed, don't you? A. They are investigated; yes, sir.

Q. And they are investigated under your supervision and direction? A. That is right.

Q. And the reasons are brought to you? A. That is right.

Q. And it is part of your duty to seek to obviate or dissipate or remove the reasons which tend to slow up the turnover? A. That is correct.

Q. You have been engaged in this position since February 1, 1936? A. That is right. 4418

Q. Now, basing your answer upon the experience that you have gathered and just testified, will you tell us what is your best opinion as to the turnover in Department 350?

By Mr. Weisman.

Q. The Court has directed you to give us your best opinion. A. I have no opinion as the best opinion.

Q. You mean you haven't any opinion? A. I don't remember the turnover.

Q. I didn't ask you whether you remembered. I asked you what your best opinion is.

By Mr. Weisman.

Q. Now, in the light of your experience as you have testified to, and in the light of the performance of your duties, have you any opinion as to what the turnover in this department is? 4419

The Witness: May I hear that question again?

(Question read.)

A. I attested that I saw fit——

Q. No. That calls for an answer "yes" or "no." Have you any opinion? A. No.

Q. Now, let me ask you this question: In the light of your experience, as testified, have you any opinion as to what the turnover in this department 350 should normally be? A. Your turnover——

Q. No. Have you an opinion as to what it should normally be?

Examiner Bennett: Have you or haven't you an opinion?

The Witness: I haven't.

4421 *By Mr. Weisman.*

Q. What? A. I haven't.

Q. You haven't any opinion? A. No.

Q. Will you please tell us, then, how you can come to a conclusion with regard to this department as to whether the turnover is sufficient or speedy to make a profit when you don't know what the normal turnover should be? A. I can. That figure is a comparison figure using generally the figure of the year before.

Q. In other words— A. It is a matter of experience.

Q. Your total ability as merchandise manager is that your turnover in this department should be at least as much as the year before? A. If the operation has been good, yes.

4422 Q. And if it isn't good, and if it isn't as much as the year before, then the operation is bad? A. I would consider it such, yes.

Q. Tell me what was your turnover in the Department 350 during the five months' period in 1936 as compared to the five months' period we have before referred to in 1935? A. I do not remember it.

Q. Did you ever know it? A. I have seen it; yes, sir.

Q. I don't ask you whether you have seen it. I asked you if you ever knew it? A. I knew it.

Q. But you have completely forgotten it? A. Like I have other figures.

Q. Lots of other figures you have completely forgotten? A. That is right. I review figures constantly.

Q. I see. When you say you review them, you mean you look at them? A. That is right.

Q. After you see them they make no impression in your mind? A. Some do, others don't.

Q. But the matter of the turnover is some that don't? A. It is a matter that must be applied at the time that they are reviewed.

Q. And then immediately forgotten? A. I don't know as it does any good to remember it. 4424

Q. Well, you and I may differ on that. A. Well, that is my opinion.

Q. What I want to know is, whether you remember it? A. I do not remember them.

Q. Let me ask you this: Have you an opinion of the amount of stock that a department ought to normally carry in relation to the sale, is volume of sales? A. There is a relationship, yes.

Q. No. I didn't ask you if there is a relationship. I want to ask you if you have an opinion on such relationship? A. Depending upon the department, the time of the year. I have an opinion as to that, yes.

Q. What is your opinion as to the relation between the volume of sales and the stock on hand in Department 350 for the month of February, 1936? A. I don't remember. 4425

Q. I didn't ask you whether you remembered. I asked you for your opinion as to what the ratio ought to be. This doesn't call for figures, Mr. Chance. A. It does call for figures.

Q. Do you think that the stock on hand of Department 350 in February, 1936, should have been ten times the amount of the monthly sales? A. That's a matter of store policy, and a matter of——

Q. What was your store policy in February, 1936? A. I do not remember it.

Q. Well, what was your store policy in March, 1936? A. I don't know. I don't remember.

Q. What was your store policy in April, 1936? A. I do not remember.

Q. What was your store policy in May, 1936? A. I don't remember.

Q. What was your store policy in June, 1936? A. Referring to the matter of turnover; is that correct in all of these questions you are asking?

Q. I am asking you questions; you are not asking me.

4427 A. Well, I want to be enlightened.

Q. If you don't remember the question I will repeat it for you. A. Please.

Mr. Weisman: Now, may we have the question, Mr. Reporter?

(Question read as follows: "Q. Do you think that the stock on hand of Department 350 in February, 1936, should have been ten times the amount of the monthly sales? A. That's a matter of store policy, and a matter of"——)

Mr. Haycraft: I submit that the witness should have been permitted to answer the question. He said "It is a matter of store policy," and something else.

4428 Mr. Weisman: You can bring that in on redirect.

Mr. Haycraft: I think the witness should be allowed to complete his answer.

Mr. Weisman: I don't care what you think. Make your objections and be seated.

Examiner Bennett: Well, do you have anything to add to that?

The Witness: I did have, sir, and the condition of sales at the time or demand.

By Mr. Weisman.

Q. Well, let's see.

Examiner Bennett: Now, can you answer the question which has been asked of you?

By Mr. Weisman.

Q. Now, will you answer the last question? A. May I have the last question, please?

(Question read.)

A. I do not remember.

Q. You remember the month of the year we are now in? A. Yes. 4430

Q. What month are we in? A. August.

Q. What was the month immediately preceding this? A. July.

Q. Now, what was your policy in July with regard to the amount of stock that you ought to carry on hand with regard to your volume of sales? A. I would have to review figures in order to determine that question.

Q. You didn't have any policy? A. There is a policy that——

Q. What was the policy? A. Your policy is always compared by your stock on hand in your sales, your ratio.

Q. Well, what was that ratio? A. I do not remember it.

Q. What is the present ratio? A. I do not remember it.

Q. Was February a particularly good month in Department 350? A. In comparison to what? 4431

Q. In comparison to January? A. My recollection—if my recollections are correct, it is about the same total.

Q. Did you ever hear of a strike in the wholesale dress business, or a threatened strike in the month of February? A. There was some discussion, quite a lot of news in the trade journals concerning it.

Q. Did that in any way curtail your stock on hand? A. I have not been notified by the buyers, or I don't remember.

Q. What? A. I do not remember of any particular incident which would refer to an abnormal shortage of merchandise.

Q. Was there a shortage of merchandise abnormal, or otherwise? A. If my recollection is right, the strike that was threatened at the time we are discussing, referred to the cheaper market rather than to the higher-priced market.

Q. Now, will you listen to my question and answer it again or try again to answer it? A. May I have the question again, please?

4433

Examiner Bennett: Yes.

Mr. Weisman: I should like to have it read.

(Question read.)

The Witness: Do you refer to the No. 350 department?

By Mr. Weisman.

Q. Yes. A. None that I know of.

Q. What was the total amount of business that you did in January in Department No. 350? A. I do not recall. What month and what year?

Q. That was for January, 1936, that we are talking about. A. I do not recall.

4434 Q. What did you do in that department in February? A. I do not recall the figures.

Q. What did you do in March? A. I do not recall that.

Q. What did you do in April? A. I do not recall.

Q. Are not February and March and April better months than January in the ready-to-wear business? A. Yes. You have the Easter season to influence your February and March figures.

Q. When did Easter come in this year, 1936? A. I believe April 12.

Q. There was no Easter in February, was there? A. No.

Q. There was no Easter in March? A. No.

Q. Would you say that February and March were better months than January? A. I think by comparison there is a difference, if I recall correctly.

Q. Do you mean a difference in favor of February and of March? A. I believe so.

Q. A difference in favor of January? A. A difference in favor of February, I believe.

Q. What was that difference? A. I do not know.

Q. I show you Commission's Exhibit No. 415. When is the first time you saw that? One moment. I withdraw 4436
that question. First, you did see that before that to-day, did you? A. What is that?

Q. You did see that Commission's Exhibit 415 before to-day, did you? A. Yes.

Q. You did see it before yesterday, did you? A. I did.

Q. When was the first time before yesterday that you saw it? A. It may have been a week.

Q. Who showed it to you? A. It was sent to me in the usual procedure of the store correspondence from our statistical department.

Q. In other words, your statistical department sent this ahead to you? A. Yes.

Q. Was that the first you heard of it? A. Of this set of figures, yes.

Q. Who, from the statistical department, sent it to you? 4437
A. I do not know who sent it to me from the statistical department.

Q. Was it accompanied by any letter? A. No. This was drawn up at my direction.

Q. Whom did you give the direction to? A. Somebody, someone answered the telephone in our statistical department and I directed that this be made up.

Q. When did you first give the direction? A. That may have been the day prior to my receiving it.

Q. When did you receive it? A. I do not know the exact date.

Q. Well, what is your best recollection as to that? A. Well, it could be almost any day last week.

Q. Would—what did you call up the statistical department and ask them to prepare for you? A. I asked them to prepare these figures because I wanted to see them.

Q. What figures did you ask them to prepare? A. I asked them to prepare the figures for these departments which are on here.

Q. What departments are on there? A. The departments designated on there. May I see that again, please?

4439 Q. Yes.

(The document was shown to the witness.)

A. These departments buying from the Guild, namely, 331, 350, 338, 358, 371 and 373.

Q. Did you tell them what departments to include in under the category of departments buying from the Guild? A. I did.

Q. What did you say? A. I told them to include those departments that should go in under that heading.

Q. Did you tell them to leave out any department? A. No, I told them to give me the total figures for that division and give me the totals for it.

Q. Did you tell them to leave out Department 338? A. No, that is included.

4440 Q. What department did you tell them to leave out, if any? A. In each particular figure?

Q. No. In departments buying from the Guild. A. I asked them to include No. 491, 492, 493, 382, 385, in the next figure which is denominated "Departments not buying from the Guild."

Q. What did you do about 371 and 373? A. They are included in the first figures mentioned.

Q. In the departments buying from the Guild? A. That is right, sir.

Q. By the way, when you received this was this in this fashion or shape? A. Yes, sir.

Q. Did it strike you as strange that your statistical department should send along a piece of paper of that kind here; is that the customary procedure in your statistical department? A. It is not customary, but I have received papers from them which were similar. It may be some information was on there which pertained to some other department or departments, and it may have been that they just cut it off. It may have been simply because the space was not used and they cut it off. I am not certain 4442
just why they cut this off.

Q. In the departments buying from the Guild, did you include Department No. 491? A. No, sir.

Q. Did you include Department No. 382? A. I did not.

Q. Did you include Department No. 352? A. 352?

Q. Yes. A. There is no such department.

Q. There is no such department? A. No.

Q. On page 2157 of the record there appears this question: "Q. Why did you not include No. 352? A. Because the total sum of purchases from the Guild in that department was very insignificant."

Mr. Haycraft: That is apparently a typographical error. That should have been 382.

The Witness: Oh, 382. What was your question 4443
now?

By Mr. Weisman.

Q. That should be 382? A. 382.

Q. So, we have it that you did not include in the Guild buying departments the 382 department? A. That is correct.

Q. What is the No. 382 department? A. 382 is the sportswear department.

Q. Did you not buy—did you not formerly do business in the sportswear department with Guild houses? A. Very little.

Q. No. I did not ask you whether it was very little or very much, because I do not know what you mean by "little," so I certainly would not know what you mean by "very little" or "very much." I asked you if you formerly did business with Guild houses in Department 382? A. Yes. The record shows that we have done business.

Q. That is why—then, why did you not throw in the department buying from Guild this Department 382 along with the other departments? A. Not for any specific rea-
4445 son, just I did not think I wanted to. I decided which ones I would put in.

Q. Did you not think that if you were going to be fair about this thing that you had better put it in? A. I did not think of that.

Q. Then, did you not think, and this is what really happened, is it not, that you could make out a little better case against the Guild if you left that department out? A. I do not think so.

Q. You are not certain? A. I am fairly sure.

Q. Did you not try a little bit to make it appear that because you could not get Guild merchandise you had suffered somewhat? A. Not particularly. I included——

Q. "Not particularly," but to some degree? A. I included one department that probably has not bought any
4446 merchandise from the Guild in the last year; namely, 373, that figure is included in the last year. There is no discrimination; I simply tried to keep the type of garments rather than to look for any particular increase or decrease or favorable showing or unfavorable showing.

Q. Now, I notice that your department which did business with the Guild did, as a whole—speaking of the departments as a whole— A. What is that?

Q. Now, I notice that your departments which did business with the Guild did, as a whole, show an increase of 13.3 per cent. in the amount of business that they did over the total amount of business that they did for the same months in 1935.

Mr. Haycraft: What month?
Mr. Weisman: March.
The Witness: Guild houses?
Mr. Weisman: Yes.
The Witness: If that is true, that is correct.

Q. Well, in view of the fact that your business went ahead 13.3 per cent. over the year before, do you still think in March, 1936, that buyers had had any difficulty in replacing Guild merchandise? A. Yes, I do. 4448

By Mr. Weisman.

Q. Now, I notice that although you testified that Department No. 350 receded in its sales in February, 1936, as against 1935 to the extent of 19.52 per cent., that the total recession in all departments was only 8.5 per cent. That is so, is it? A. I testified that that department was most affected.

Q. Yes? A. Yes.

Q. Notwithstanding the fact that you testified that department was most affected, the total of all departments, you stated, in all, only took in, in February, 8.5 per cent., or went back in February 8.5 per cent.? A. What is that? 4449

Q. Notwithstanding the fact that you testified that department was most affected, the total of all departments, you stated only went back in February 8.5 per cent.? A. If it is on that sheet of paper I think that is so. Yes.

Q. That is also your statement, that notwithstanding the fact that if there were any shortage in merchandise in the month of February because of a threatened strike, it

would affect the lower-priced departments, rather than the Department No. 350? A. By my "lower-priced departments" I had reference to $4.75 cost merchandise.

Q. $4.75 cost? A. Yes.

Q. $4.75—what do you mean that sold for? A. $6.95 retail.

Q. What else? A. That is all.

Q. Flat? A. Yes.

Q. Now, I also notice that in April your total decrease over April, 1935, was only 1.9. In other words, that in April, 1935, the total business done in all departments dealing with the Guild was eight—I had better be sure
4451 about this (showing document to the witness) $83,800? A. That is the 1935 figure?

Q. Yes. A. Yes.

Q. Was $83,500——

(There was a discussion off the record.)

Q. Was $83,800—well, in April, 1936——

Examiner Bennett: I think you had better connect that up a little better there so the witness can get a clear picture of it, Mr. Weisman.

Mr. Weisman: I shall be glad to do so, your Honor.

By Mr. Weisman.

4452 Q. Now, I also notice that in April your total decrease over April, 1935, was 1.9 per cent. In other words, that in April, 1935, the total business done in all departments dealing with Guild merchandise was $83,800, while in April, 1936, it was $82,200. A. A decrease.

Q. What? A. A decrease.

Q. A decrease of 1.9 per cent. Do you think that shows some evidence of the fact that your buyers had overcome this "difficulty" that you told us about on your direct examination? A. No; I do not believe it does.

Q. Now, I notice that in May, 1935, your total sales in the Guild departments was $75,300, while in 1936 your total sales in those departments was $77,700; in other words, an increase of over 3 per cent. Would that seem evident to you that your buyers had overcome this "difficulty" that you told us about? A. No, sir.

Q. Now, I notice that in June, 1935, your total dress sales in the department affected by the Guild was $88,200, while in June, 1936, this mounted to $91,700, an increase of 4 per cent.; would that seem some evidence to you that your buyers had overcome this "great difficulty" that you told us about? A. No, sir.

Q. It would not? A. No, sir. 4454

Q. Now, I notice that the total business done in all dress departments for the five months of February, 1936, through June, 1936, was $934,400; is that so? A. May I see it?

Q. You may (indicating). A. That is right.

Q. Now, yesterday, or the day before, Mr. Tily testified, or stated to us, that he believed the total volume in the dress business was approximately $3,000,000, or approximately three times that. Were you present when he so testified? A. I believe I heard some figure like that.

Q. In view of that testimony as given by Mr. Tily, your superior, would you not say that the last six months of the year are much better than the first six months of the year?

4455

Mr. Haycraft: That is objected to as comparing Mr. Tily's testimony.

Mr. Weisman: I am not comparing it. I want to refresh his recollection.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman:

Q. Mr. Tily also stated that last year they did approximately $3,600,000; do you remember that? A. I do not, exactly.

Q. Now, I notice that in the first five months of 1935—that is, commencing with February—the total volume done in all departments, all dress departments, was $850,400—

Mr. Haycraft (interposing): I object to that. I object to that.

Mr. Weisman: You might be courteous enough to let me finish with my question before you interrupt in that very discourteous way.

4457

Examiner Bennett: Had you completed your question?

Mr. Weisman: No, your Honor.

Examiner Bennett: Proceed to complete the question.

By Mr. Weisman:

Q. Well—I have forgotten what I said now. He simply interrupts me for that purpose, to throw me off on my thought. I think it is certainly discourteous in the extreme.

Examiner Bennett: The question may be read, so far as it has been given.

4458

(Question read.)

By Mr. Weisman:

Q. —now, is it your opinion that the total volume done in 1935 was $3,000,000?

Mr. Haycraft: I object to that on the further ground, or, the further objection is, Mr. Examiner, that the record shows in this case that there should be no comparison made because this department

does not include all of the dresses sold by the store of Strawbridge & Clothier. The testimony of Mr. Tily is that there is a basement store, which did not come within these figures shown on this exhibit.

Mr. Weisman: Let's see.

Examiner Bennett: Well, it doesn't make any difference whether there was or not. This witness is not responsible for what Mr. Tily testified to.

Mr. Weisman: I am not making him responsible.

Examiner Bennett: I don't see why——

Mr. Weisman: I want to get his opinion.

Mr. Haycraft: I have an additional objection. 4460

Examiner Bennett: I think that is a matter for argument when you come to that phase of it. I don't see why we should clutter up the record with it now.

By Mr. Weisman.

Q. Did you tell them to leave the basement out of these non-Guild resources? A. I have no access to other figures but those of the departments that I am directly responsible for.

Q. Do these figures "No Guild Resource"—have you excluded the sale of dresses in the basement? A. They are departments that I have supervision over and which I have enumerated to you.

4461

Q. Oh. Well, you know we don't know as much about these code numbers as you do, nor does the Commission. I want to know from you whether or not when these figures were made up under the heading "No Guild Resource" you left out the basement figures.

Mr. Haycraft: I object to that question, Mr. Examiner.

Mr. Weisman: You have offered this in evidence. I want to know.

Mr. Haycraft: The record shows——

Mr. Weisman: What this contains.

Mr. Haycraft: The record shows very clearly what it contains and the basement was not mentioned. It has nothing to do with this exhibit, and nothing to do with the testimony of this exhibit.

Mr. Weisman: Now I see the point of your running in numbers instead of names.

Examiner Bennett: Just a moment.

Mr. Haycraft: There is nothing mysterious about it. The witness testified as to what his departments were and what these figures referred to. There is no exclusion.

4463

Examiner Bennett: Just a moment. I am going to ask a few questions to clear it up in my own mind. Are the departments covered by that statement in the upper store or in the basement?

The Witness: In the upper store, sir.

Examiner Bennett: Are there any of the departments covered by that statement in the basement?

The Witness: There are not. My testimony is about my departments that I have charge over.

Examiner Bennett: You have given, as I understand it, the departments over which you have supervision?

The Witness: That is right, sir.

Examiner Bennett: And only those?

4464

The Witness: Only those in my testimony throughout.

Examiner Bennett: I see. Do you know, as a matter of fact, whether the basement stores get, or the basement store goes to Guild members for its supplies, for its source of supply?

The Witness: No, Mr. Taylor is in a better position to answer that question.

Examiner Bennett: You wouldn't know?

The Witness: I wouldn't know.

Examiner Bennett: All right. That clears it up with me.

Mr. Haycraft: There is an objection pending.

Examiner Bennett: Well, I don't know just what the force of it is. If you will just indicate what it is.

(The record was read.)

Examiner Bennett: That disposes of Mr. Haycraft's objection. I overrule it, as far as that is concerned, because the matter has been disposed of, as far as I can see.

Mr. Weisman: All right, Judge. 4466

By Mr. Weisman.

Q. What priced merchandise do you handle in Department 371? A. Dresses retailing at $3.95 and up.

Q. Was that included as a Guild— A. Yes, sir.

Q. —resource Now, what price do you pay for dresses that retail at $3.95 and up? A. Those dresses are purchased in a $2.50 or $2.75 cost market.

Q. Have you any figures which would show us how Department 371 did during the five months of 1936? A. Simply a comparison by price line which I submitted yesterday during the testimony.

Examiner Bennett: We will take a recess of ten minutes. 4467

(A short recess was taken.)

Examiner Bennett: Be in order, please.

By Mr. Weisman.

Q. Now, I think just as we were recessing you told us that in Department 371 your retail price was $6.95; is that correct? A. I don't believe I did.

Q. Didn't you tell us that your price started at $4.75 wholesale? A. I did not.

Q. What did you want to tell us? A. I did tell you what I wanted to tell you.

Q. Well, tell us again. A. I told you they started at $3.95 retail.

Q. At $3.95 retail? And what is your next price? A. I don't know what the next price is. A list of prices which occurred in that department, experience in selling for five comparative months has been submitted yesterday.

Q. Well, let me see.

Mr. Weisman: Will you read my last few questions and answers?

(The record was read.)

4469 The Witness: Perhaps I can help you, Judge.

By Mr. Weisman.

Q. Sure. Go ahead. A. It was pertaining to another department that you asked me.

Examiner Bennett: That is what I thought.

By Mr. Weisman.

Q. What was the other departments? A. The 491 department, economy dress department.

Q. You say that I asked you about 491?

Examiner Bennett: It is my recollection that you asked him about a different department which

4470 had a wholesale price of $4.75, or something like that.

The Witness: That is right, sir.

By Mr. Weisman.

Q. Did you give us a summary of your Department 491? A. I did not.

Q. Why didn't you give us a summary of that department? A. I gave you the summary of the department that we were buying from Guild resources only.

Q. Well, Department 471 buys from the Guild resources; doesn't it? A. 371?

Q. Yes. A. Yes.

Q. Now, do you know of any Guild houses who sold merchandise during the five months' period in 1936 which retail in your store at $3.95? A. I do not.

Q. Do you know of any Guild houses that sold merchandise during that period which retailed in your store at $5.95? A. I do not.

Q. Do you know of any Guild houses which sold you any merchandise during that same five months' period which retailed at $7.95? A. No.

Q. Do you know of any Guild houses that sold you any 4472
merchandise during that same five months' period which retailed at $8.95? A. No.

Q. Do you know of any Guild houses that ever sold you merchandise during the five months' period in 1935 which retailed in your store at $3.95? A. I wouldn't know that, sir.

Q. Well, do you know of any Guild houses which during that five months' period in 1935 sold merchandise which retailed at $5.95? A. I do not know of any houses or Guild houses prior to February 1st, 1936, that is——

Q. Will you tell me what was the purpose of including in Commission's Exhibit No. 414 price lines at $3.95, $5.95, $7.95 and $8.95? A. Yes, to show a true picture in order to make it clear that there wasn't any particular price discriminated. They are the price lines carried in that de- 4473
partment and that is our selling experience.

Q. Well, let's see. I see from here that your $7.95 price line in February, 1935, you sold 139 garments, while in February, 1936, you sold almost three times as many garments, 383; is that correct? A. May I see it, please?

(Commission's Exhibit No. 414 was handed to the witness.)

By Mr. Weisman.

Q. Did you see that? A. Yes, I do.

Q. Is that true? A. That is true.

Q. I also see that in March, 1935, at that price you sold 255 garments, but in March, 1936, you sold 388 garments, an increase of almost 50 per cent? A. That is right.

Q. I notice that in April, 1935, in that department you sold 295 garments, while in 1936 you sold 614 garments, an increase in excess of 100 per cent. A. That is correct.

Q. I notice that in May at that price line, May, 1935, you sold 257 garments, while in May, 1936, you sold 454 gar-
4475 ments. A. That is correct.

Q. In June, 1935, you sold 435 garments, yet in 1936 you sold 672 garments. A. I have 425 garments on my sheet here.

Q. 425 for June? A. June, 1935.

Q. Yes. A. Yes. The '36 figure is still a better percentage of increase.

Q. In June, 1936, you sold 672 garments. A. Yes, sir.

Q. Now, certainly, then, you would not urge that at that price range the Guild policy has injured you one iota? A. I don't know whether that price range was purchased from the Guild resources in 1935.

Q. Whether it was purchased or not, the activities of the Guild haven't injured you; have they? A. They have
4476 injured us in other price lines.

Q. Oh. I say, at that price line. A. Our sales there are better for 1936 than 1935.

Q. Yes. Isn't that so? A. We do have other prices that we were affected in.

Q. I didn't ask you that. I said at that price range you certainly weren't affected? A. Well, we had to put our weight on that price line in order to keep up our sales.

Q. So that you weren't affected? A. In that particular price line, no.

Q. That is right. You are not afraid to answer my questions: are you? A. No, I am answering you.

Q. There may be two opinions on that. A. Possibly.

Q. You say that you were affected in your price line at $5.95 retail injuriously? A. According to the figures here, taking the total for five months, we haven't.

Q. All right. Now, let's see the price line at $12.95. In February, 1935, at $12.95 you sold seventy-two garments; is that right? A. That is right.

Q. February, 1936, you were red carded, you sold eighty-one garments? A. That is right.

Q. In March, 1935, you sold 153 garments? A. That is correct.

4478

Q. In March, 1936, there was a recession. You only sold 151 garments? A. That is right.

Q. You had a difference of two garments? A. Two garments, yes.

Q. Do you think that was a very serious thing? A. Well, that is a matter of opinion.

Q. I want your opinion. A. I haven't—I don't know how many more we would have sold had we had Guild merchandise.

Q. Do you think that was a serious recession in that month? A. Well, taking into consideration our total increase for my division, I would say it is.

Q. I see. I want to get your opinion. Now, I do notice that in April, 1935, you sold 197 garments, but in 1936 you only sold 141 garments at that price; is that correct? A. Yes, sir.

4479

Q. So you have a recession there, but I notice also that in May, 1935, you only sold 131 garments at that price. A. That is right. That is correct.

Q. Yet, in 1936, for the same month, you went up to 154 garments? A. That is correct.

Q. In June, 1935, you sold 104 garments, but in June, 1936, you increased those sales by almost 50 per cent.; isn't that so? A. That is correct.

Q. Isn't that some indicia that at that price line your buyers had been enabled to overcome this great difficulty that you told us about? A. It is conclusive that we were injured in several months there.

Q. No, that isn't what I asked you.

Mr. Weisman: I ask that the answer be stricken out.

Examiner Bennett: It may be stricken.

By Mr. Weisman.

Q. Now——

4481 The Witness: May I have the question again, please?

Mr. Weisman: We will give it to you again. Will you please try to answer it?

The Witness: Sure.

Mr. Weisman: Will you give him the question?

(The question was read.)

Mr. Haycraft: I wish to interpose an objection, Mr. Examiner, as the question is not proper in the form it is in as it includes a statement of fact which is not in the record. The witness did not testify that the buyers in this department had to overcome great difficulty. It was in the Departments 331 and 350 to which the witness referred to in such a matter.

4482 Mr. Weisman: In view of the statement of counsel for the Commission, I will withdraw the question.

Examiner Bennett: All right.

Mr. Weisman: May we have the exhibit now, please?

The Witness: Surely.

(Commission's Exhibit 414 was handed to Mr. Weisman.)

By Mr. Weisman.

Q. You constantly, in your testimony, referred to "resources" of a particular department; what do you mean by the word "resources"—first, have you made that statement? A. I have mentioned resources from time to time.

Q. When you use the word "Resources"; what do you mean? A. I mean by that the source of supply.

Q. You mean those are sources to whom you may go to get your merchandise; is that so? A. In a general term, yes.

Q. You mean, and you merely mean, as a general term, that in the practice of your business these people whom you denominate as "resources" were some of the people 4484
from whom your buyers elected to purchase merchandise? A. In which particular line of resources are you now referring to, or to which?

Q. When you use the word "resources" in your testimony is that not what you mean? A. Yes, people from whom we may buy goods if we want to.

Q. You do not mean to give the impression, do you, that by "resources" you mean they are the only available resources? A. No. I do not.

Q. All right. I just wanted to clear that up. A. No. I do not.

Q. Now, you gave the names of some people from whom this Department No. 371 purchased merchandise; do you remember that? A. I remember reading such a list, yes. 4485

Q. In other words, you state that you read such a list into the record? A. That is correct.

Q. Now, do you know anything about the price lines of those particular names that you read? A. May I have the names, please?

Q. Well, one of them was R. K. Junior Frocks. A. I do not know the price lines of those resources.

Mr. Haycraft: Does not my stipulation cover all of that, Mr. Examiner?

Examiner Bennett: I do not know what he is getting at, yet. I thought it was broad enough.

Mr. Weisman: Suppose we discuss this off of the record—are you willing to stipulate as to all of these people——

Examiner Bennett: Off of the record until you get the thing straightened out, if you can.

(There was a discussion off the record.)

Mr. Weisman: In lieu of cross-examination in regard to the following list of people from whom this witness testified that he bought—that the department bought merchandise; to-wit: R. K. Junior Frocks, Ashley Frocks, Inc., Horowitz & Dubermann, Jane Junior Dresses, Inc., Jo-Anne Junior, Junior League Frocks, Silver Dresses, Will Steinman, Bon-Ray, Daniel Westheim, Junior Guild of Chicago, and Rose-Anna Junior, counsel for the Commission stipulates that if the witness were asked as to the price ranges at which these particular merchants and manufacturers sold their merchandise, he would answer that he was unaware thereof and that he did not know it when he gave the names yesterday, nor before, and that he would so likewise testify that he was unaware now and was unaware yesterday or before of the type of merchandise that they made.

4487

Mr. Haycraft: Is that correct?

The Witness: Yes, sir.

4488

Mr. Haycraft: Very well, the witness says it is a fact and I will so stipulate.

Examiner Bennett: The stipulation is received.

By Mr. Weisman.

Q. Do you know the volume of business that these houses did? A. No.

Q. When you testified that prior to February 1, 1936, Department No. 371 did business with these houses, how long a period did you mean to include therein? A. I meant to include only at the time of the red carding.

Q. Well, now, will you state that at the time of the red carding and you are certain that at the time of the red carding you were actually doing business with these houses? A. I can through the records——

Q. (Interposing) Wait a minute. I want you to answer my question. A. I can attest through the records to include the year 1935.

Q. Do you? A. I do.

Q. You mean at some time during the year 1935 it is 4490
your belief that your firm through its—this department did business with the names that we just enumerated? A. Yes, and up to the time of the red carding.

Q. That is for a period of thirteen months? A. Whatever that time is.

Q. During that time how many non-Guild houses did your firm or had your firm done business with through this department? A. I do not know.

Q. What is your best guess on that? A. I would not guess.

Q. What is your opinion—first, have you an opinion? A. I have no opinion.

Q. You have no opinion? A. No.

Q. Do you know in this Department No. 371 with this wide range of prices you do business with a great many 4491
other manufacturers than in Department No. 331? A. It is possible.

Q. Is it more than possible, is it not really a fact? A. I do not know whether it is or not.

Q. Have you an opinion as to whether or not it is? A. I do not have an opinion to-day.

Q. What, you do not have an opinion to-day? A. I would not have any opinion on it.

Q. Are you in charge of this department? A. Yes, sir.

Q. Would you deny that in this department you do business with at least 150 manufacturers? A. I am not taking any guess.

Q. Is that a fact? A. I do not know whether it is or not.

Q. Do you deny that it is a fact?

Mr. Haycraft: I object to any further interrogation on that point.

Mr. Weisman: I think it is rather enlightening a subject to inquire into at this time, Judge. It is certainly illuminating to see how the witness will

4493 testify on direct examination and then on cross-examination.

Examiner Bennett: It seems to me that we have been over that.

Mr. Weisman: No, not as to that department. All of these departments were introduced separately and I regret the necessity of going over them separately, but I do not want to be confronted with some later date as to "Oh, as to that department, you did not inquire."

Examiner Bennett: I will let you go on for a reasonable time. Go ahead.

By Mr. Weisman.

4494 Q. Would you give it as your opinion that Department No. 331—that in Department No. 371 you do business with at least as many firms as you do business with in Department No. 331?

Mr. Haycraft: I object. He said he had no opinion.

Examiner Bennett: Sustained on the basis of the technical defect in the question.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Have you any opinion as to the number of firms that you do business with in Department No. 371, as compared to Department No. 331?

Mr. Haycraft: I object.

The Witness: I said I did not.

Examiner Bennett: Overruled.

By Mr. Weisman.

Q. Have you any opinion as to whether or not you do business with more than the firms or less than the firms with regard to Department 371; that is, that you do with regard to Department No. 331? 4496

Mr. Haycraft: Same objection.

Examiner Bennett: Well, I am going to let him answer it.

The Witness: I cannot answer that, Judge. I do not know.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Did you ever make up a list of the manufacturers with whom Department No. 371 did business? A. Such a list is available.

Q. Where is it available? A. In the records here, sir.

Q. Are those records open to you as divisional merchandise manager? A. Yes, sir, they are. 4497

Q. Will you to-morrow morning when you resume the witness stand, bring with you a list showing the number of manufacturers with whom you did business who were not members of the Guild, or, rather with whom Department No. 371 did business, who were not members of the Guild, for the thirteen months preceding February 1, 1936?

Mr. Haycraft: The witness will not.

A. I will not.

Mr. Haycraft: I object. I object to counsel directing the witness to do anything.

Examiner Bennett: The witness has declined.

By Mr. Weisman.

Q. Why will you not? A. I would like to include all the rest of that department, all of the resources of that department, both Guild and non-Guild for that year.

Q. Do you know that you gave us a list—you gave us
4499 a list of the Guild resources? A. At the time of being red carded. There may have been others prior to that.

Q. Let us see what you want to do. Maybe we can agree upon it. You say that you want to bring in tomorrow a list setting forth—setting forth all of the reasons—all of the manufacturers with whom you did business during the thirteen months preceding February 1, 1936?

Mr. Haycraft: That is objected to.

By Mr. Weisman.

Q. Is that so?

Mr. Haycraft: I object. He did not say that.
4500 He said he would not.

By Mr. Weisman.

Q. You said a while ago that you were willing to do that, did you not? A. I said I will not.

Mr. Weisman: You do very nicely after Mr. Haycraft gives you the idea.

Mr. Haycraft: I resent that.

Mr. Weisman: Oh, be quiet.

By Mr. Weisman.

Q. Will you bring us a list showing the number of non-Guild manufacturers with whom you did business during the period, while you did business with Guild manufacturers, so that we may have the relative number thereof of both Guild and non-Guild manufacturers? A. I would like to refer that to my superior to-night at our conference.

Q. Who is your superior? A. Mr. Frank Smith.

Q. The gentleman who has been sitting here in the court room throughout all of this proceeding? A. Yes, sir.

Q. Will you ask him now and see if he will answer you as to what you may do?

4502

Mr. Weisman: Will you please make a note in the record that Mr. Frank Smith is now in conference with Mr. Freeman, his attorney.

By Examiner Bennett.

Q. Will you do that? A. I would prefer to confer with my superiors before I do so.

Q. You want to confer with them to-night? A. I do, sir.

Q. Do you decline to do so now? A. I decline to do so until I confer with my superiors.

Examiner Bennett: He declines to go into it at this time, but he will do so this evening.

The Witness: Yes, Judge, I will do so this evening. 4503

Mr. Weisman: I now move to strike out all the testimony appearing on page 2134 of the record with regard to Guild houses that he did business with during the thirteen months prior to February 1, 1936, in view of this refusal.

Examiner Bennett: I deny the motion.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Now, have you any idea, or have you an opinion as to the volume of business that was done in the five months of 1936, that we have had reference to, in this Department No. 371?

Mr. Haycraft: I object.

Examiner Bennett: You are calling for his opinion?

Mr. Weisman: I am asking him for his opinion.

Examiner Bennett: You are asking for a fact.

Mr. Weisman: I am trying to take a short-cut. He never knows the fact.

4505

Examiner Bennett: An opinion is not the proper thing to give upon a fact.

By Mr. Weisman.

Q. Do you know the volume of business done by Strawbridge & Clothier in Department No. 371 from the period February 1, 1936, to June 30, 1937? A. 1937?

Q. 1936. A. No.

Q. Have you an opinion thereon? A. I have no opinion.

Q. Now, I show you Commission's Exhibit No. 414. I ask you to take Commission's Exhibit 414 with regard to Department No. 371, and take a pencil and paper and extend the figures thereon and see whether or not upon such an extension it will not appear to you that the volume

4506 of business done during the first five months; February 1, 1936, to June 30, 1936, amounts to $67,178? A. Have you extended?

Q. Yes. A. Did you get that extension and do you assure me that is correct?

Q. Yes. A. Correct, I will take your word for it.

Q. Thank you. You also testified—now, will you tell us in that department whether or not the total volume that you did in the first five months and for the same pe-

riod in 1935, namely, the period from February 1, 1935, to June 30, 1935, was less than the amount of business that you did for the same period of time in 1936, namely, February 1, 1936 to June 30, 1936, being about the sum of $63,000? A. I am sorry. I do not get that question.

The Witness: I am sorry. I didn't get that question. May I have it?

(Question read.)

Mr. Weisman: I will reframe the question.

By Mr. Weisman.

Q. Do you know the volume of business that you did, that was done in that department in February 1, 1935, to 4508
June 30, 1935? A. I do not.

Q. Have you any opinion thereon? A. I have not.

Q. Have you any opinion whether such volume was greater or lesser than you did in that period during 1936? A. I have a recollection there was a slight gain this year over last year's figures.

Q. Thank you. Now, in this department of 371 your price range goes, I see from your Exhibit 414, to $3.95 to $65 retail; that is correct, isn't it? A. May I see the exhibit, please? Is that the one we have just referred to?

Q. Yes, that is the one we have just referred to. A. If it is on there it is correct, yes.

Q. Where the price range is from $3.95, retail, to $65, retail, what wholesale price range would you say that in- 4509
cludes? A. From $2.50 cost, possibly as high as $39.75.

Q. From $2.50 cost to what? A. To $39.75.

Q. By the way, in all of these wholesale figures, you are giving us what we call gross figures, aren't you? A. That is right.

Q. In other words, these figures are subject to either 8 or 10 per cent. discount? A. Usual discount.

Q. Yes. A. Yes.

Q. Have you any idea of the number of manufacturers engaged in manufacturing dresses in the City of New York wholesaling at the price ranges between $2.50 and $39.75? A. I do not.

Mr. Haycraft: The same objection as to the previous line of questioning.

By Mr. Weisman.

Q. Don't you know that there were approximately 3,000 manufacturers during the period of 1935 engaged in the business of selling dresses at prices, wholesale prices, varying from $2.50 to $39.75?

4511

Mr. Haycraft: That is objected to as including facts not in the record.

By Mr. Weisman.

Q. Don't you know that as a fact?

Mr. Haycraft: I object to that question.

A. I don't know.

Examiner Bennett: Just a moment.

By Mr. Weisman.

Q. What is your——

4512

Examiner Bennett: Just a moment. That is disposed of, really. He has answered.

Mr. Haycraft: Move it be stricken.

By Mr. Weisman.

Q. I show you a booklet entitled "Buyers Informant," and ask you whether you ever saw that before? A. It is the first time I saw this book.

Mr. Haycraft: Mr. Examiner, we are going over the same thing we went over this morning on these books.

Examiner Bennett: What?

Mr. Haycraft: I say, we are going over the same territory we covered this morning in respect to these books. I object to any further interrogation along that line.

By Mr. Weisman.

Q. When you said that was the first time you ever saw this book, did you mean by the word "this" the one I held in my hand? A. Yes. 4514

Q. Oh. Did you see another one? A. I may have seen books similar to that.

Q. And that was your idea of an honest answer to me, when I asked you if you ever saw this book before? A. Why, you asked whether I saw that book and I answered you.

Q. Oh, I see. Well, now, let me ask you: Did you ever see a book like this before, or— A. I have seen certain books, Fairchild's publications and others pertaining to the market.

Q. Have you seen another issue of this (indicating)? A. I wouldn't say I have. It is a specific date, a specific issue, spring and summer, 1936.

Q. You didn't see that one? A. I don't know whether I have seen it or not. 4515

Q. Did you see the one that was issued during 1935? A. I don't believe I have.

Q. Now, you mentioned the Fairchild publication. Have you on your desk a copy of that? A. They are available for our use.

Q. They are available for your use? A. They are.

Q. Did you, from time to time, use this? A. Yes, I have referred to it quite often.

Q. Did you, in February, 1935, refer to it? A. May I see it again?

(Book referred to was handed to the witness.)

A. I may have referred to the book of that type in February, 1935.

Q. And what about February, 1936? A. I possibly have.

Q. Does this book give a list of manufacturers engaged in the manufacture of ladies' dresses? A. It does.

Q. And is it generally used in the retail ready-to-wear trade for the purpose of obtaining a ready available list of the various manufacturers at the various price lines?

4517 A. It is used for many reasons, not alone that.

Q. Is that one of the reasons? A. It possibly is.

Q. Is that the reason that you used it for? A. Not necessarily.

Q. I don't ask about necessarily, I ask you what you used it for? A. I personally use it to look up telephone numbers.

Q. Telephone numbers of whom? A. Of people whom I have occasion to call.

Q. Well, why don't you use the telephone directory? A. That was handier.

Q. Is that the use you made of it? A. It is easier to look up any particular man because they are specified and classified in a particular sense.

Q. In what particular sense are they specified and classi-

4518 fied? A. By price line.

Q. By price line? A. Types.

Q. So that by examining that— A. They are indexed.

Q. So that by examining this book you could readily find a list of the various manufacturers in the City of New York engaged in the manufacture of dresses at the various price lines? A. Yes, but it wouldn't help us in experience.

Q. I didn't ask you whether it would help you or not. I asked you whether that was a fact? A. The names can be looked up there and the list made, yes, whatever purpose it can be used for, I don't know.

Q. Do you know how many, roughly speaking, names are listed in this book?

Mr. Haycraft: That is objected to, Mr. Examiner, unless some foundation is laid to show that he ever used the book.

Mr. Weisman: I think I have shown plenty of it now.

Mr. Haycraft: For the purpose of looking up manufacturers who are sources of supply. 4520

Examiner Bennett: Well, he can say whether he knows.

The Witness: No, I do not, Judge.

By Mr. Weisman.

Q. Will you now look at it, and after so looking give me your opinion as to the number of dress manufacturers engaged as therein listed in the business of manufacturing and selling ladies' dresses between the wholesale prices of $2.95 and $39.75?

Mr. Haycraft: That is objected to, Mr. Examiner.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. 4521

I now offer this book in evidence.

Mr. Haycraft: That is objected to.

Examiner Bennett: I am not going to receive it. You may mark it if you want to.

Mr. Weisman: Will you mark this?

(Book referred to was marked for identification Respondents' Exhibit 21.)

By Mr. Weisman:

Q. Did you ever hear of a directory known as the "Dress Buyers' Directory"? A. May I see it?

Q. I am asking you whether or not you ever heard of such a directory? A. Not to my recollection.

Q. Well, when I show you this book, does that refresh your recollection as to whether or not you heard or saw of such a book before? A. This is the first I have seen of any of this kind of book.

Q. You don't say as to this one that it is the first you saw of this book, do you? A. No, I said, "any."

Q. I see. When you said to me before that you didn't
4523 see this one, were you trying to fool me? A. I don't understand what you mean by that.

Q. I see. Well, now— A. Do I appear to be fooling you?

Q. Now, I show you this book, "Buyers' Informant," the one that you said before that you hadn't seen this one, meaning the one that I had in my possession. Did you ever see one like this before? A. I have.

Q. And is one of those on your desk? A. It is available in the institution.

Q. And it is the use that you put to this book that of looking up telephone numbers, likewise? A. That is right, the same use.

Q. That is the purpose for which you use this? A. That
4524 is right.

Q. You do not consult this book for the purpose of finding the names and addresses of manufacturers engaged in the business of manufacturing dresses? A. The buyers may do that, but I do not.

Q. Have you ever done it? A. I have; yes, sir.

Q. When you were a buyer? A. Yes, sir.

Q. And when you were a buyer you used such a book as this? A. I may have referred to it in several instances.

Q. When you became a divisional merchandise manager over all of these departments, did you forget the sources of information which you had when you were a buyer, or did that continue to remain in your mind? A. That continued to remain.

Q. Well, then, when you became the divisional merchandise manager, you knew of such a source of information as this which I now show you, didn't you? A. Yes.

Mr. Weisman: I wish to have that marked for identification so that I may refer to it.

Examiner Bennett: It may be so marked.

(The book referred to was marked Respondents' Exhibit 22 for Identification.) 4526

By Mr. Weisman.

Q. Now, when you found out that your buyers in reporting to you that they had difficulty in replacing Guild merchandise, did you examine a directory similar to Respondents' Exhibit 22 to see what other—Respondents' Exhibit 22 for Identification—to see what other sources might be available?

Mr. Haycraft: Objected to.

Examiner Bennett: I think this objection, as I understand it, was acquiesced in by respondent and by the Commission.

(There was a discussion off the record.) 4527

Mr. Weisman: May I have a ruling on the question?

Examiner Bennett: Yes. I sustain the objection.

Mr. Weisman: Exception.

Examiner Bennett: You may put that in at the proper time.

Mr. Weisman: Thank you. I take it that you mean on our direct.

4528 *Samuel J. Chance—For Commission—Cross.*

By Mr. Weisman.

Q. Assuming that your store sells in the ready-to-wear departments annually $3,000,000 of merchandise at retail, $3,000,000 worth of merchandise at retail, as divisional merchandise manager of these various departments, have you any opinion as to what the wholesale cost of the merchandise it sells in similar round figures?

Mr. Haycraft: That is objected to, Mr. Examiner, as not being in accordance with the record. There is no testimony to the effect that this witness' departments' total sales amounted to $3,000,000. $3,000,000 includes the basement figures.

4529 Mr. Weisman: I have included everything.

Mr. Haycraft: Mr. Examiner, may I please be allowed to continue my objection and not be interrupted?

Examiner Bennett: All right. Go ahead.

Mr. Haycraft: I appeal to you because of your position in this hearing room.

(There was a discussion off the record.)

Mr. Haycraft: Will you read my objection up to the point I was interrupted?

(The objection was read.)

Mr. Haycraft: Therefore, I object to the question as a concluding statement of fact which is not correct.

4530 Examiner Bennett: I will sustain the objection.

Mr. Weisman: May it please your Honor, I have had nothing to do with—I didn't say anything about the basement.

Examiner Bennett: This witness very evidently would not be able to make any such statement.

Mr. Weisman: I asked him whether he had an opinion.

Examiner Bennett: He would make a wild statement. It would be a perfectly wild statement.

Mr. Weisman: I don't think so. It is generally known among merchandising people what mark-up is, that if merchandise in a certain number of departments sells——

Examiner Bennett: You went over matters of figures that the witness handled specifically a few months ago. There is no indication that he ever handled figures of this kind. No one has testified that he has. It is just a rather wild fishing expedition and please don't encumber the record with that sort of stuff. We have had it extended enough already.

Mr. Weisman: I deem this rather important. 4532

Examiner Bennett: Yes.

Mr. Weisman: And I wish——

Examiner Bennett: Yes, if it is so important, then I will shut it out right now.

Mr. Weisman: All right. That is within your Honor's province.

Examiner Bennett: It has been objected to and I sustain the objection.

Mr. Weisman: May I point out to your Honor that a merchandise manager——

Mr. Haycraft: I object to statements going into the record after a ruling.

Mr. Weisman: Your Honor ruled permitting me to make an argument.

Examiner Bennett: I have made my ruling and 4533
I don't care about further argument. If you want to except to it, or if you want——

Mr. Weisman: I further wish to make this offer of proof: That if the witness had been enabled to answer, I believe he would have an opinion. I thereupon would have asked him the further questions as to what that opinion is, and I believe that he would have answered that the merchandise at

cost exceeded the sum of $1,500,000. I don't believe that any merchants obtain more than 100 per cent. mark-up on their cost price.

Mr. Haycraft: Ha.

Mr. Weisman: And I believe that that figure is entirely germane to the fact that there has been offered in evidence here figures showing the total purchases made of Guild members, and I believe that the total purchases of Guild members are material only when compared with the total purchases made in the entire store.

Examiner Bennett: All right.

4535 Mr. Haycraft: I move to strike the offer of proof.

Examiner Bennett: It may be stricken.

Mr. Weisman: Exception.

Examiner Bennett: The statement of offer of proof on the face of it shows its incompetency.

By Mr. Weisman.

Q. Now, with regard to Department 371, where you have a retail price line at $3.95, what is the wholesale price of that garment that retails at that price line?

Mr. Haycraft: Objected to, mere repetition. It is already in the record.

Examiner Bennett: That is in the record. Why

4536 go over that?

Mr. Weisman: Your Honor, I am trying to show what these are so that I may use them as a basis for further information.

Examiner Bennett: It is already in the record. Do you want to make an assumption in regard to that? If you do so desire you may interrogate the witness in that regard.

By Mr. Weisman.

Q. Did I understand you to say that the cost of that merchandise that retails for $3.95 is $2.50 per unit? A. What?

Q. $2.50 per unit? A. I did say that.

Q. You did say that garments which retail at $3.95 cost at wholesale $2.50 per unit? A. I did say that, yes.

Q. What is the wholesale cost of your $5.95 merchandise at retail? A. $3.75.

Q. $3.75? A. Yes.

Q. What is the wholesale cost of your $7.95 retail merchandise? A. $4.75 at wholesale.

Q. What is the wholesale cost of your $8.95 merchandise at retail? A. $5.75. 4538

Q. What? A. $5.75.

Q. $5.75? A. Yes.

Q. What is the wholesale cost of your retail garments at retail at $10.95? A. Generally $6.95—$6.75 cost, I should say.

Q. Which is it? A. $6.75.

Q. And of those that retail at $12.95? A. Well, they would be $7.75—it could be $7.75 or it could be within the $8.75 market.

Q. What about those garments which retail at $14.95? A. $7.75 or $8.75 market.

Q. And what would be the fact as to those which retail at $16.95? A. Generally, $16.95 market—or it could be $8.95 or $8.75, rather. 4539

Q. You mean $16.75? A. Oh, no, no. $10.75 market, although it could be, as I said before, $8.95 or $8.75, rather.

Q. What about those garments which retail at $19.95? A. $10.75 to $14.75, inclusive.

Q. What about those that retail at $25? A. That could be $14.75 to $16.75 market.

Q. What about those that retail at $29.75? A. That could be the $19.75 cost market.

Q. What about those that retail at $39.75?

The Witness: Judge, I want it understood here that I am simply giving these figures as the general or average of the entire department.

Examiner Bennett: Yes.

By Mr. Weisman:

Q. We understand that. Now, give us the answer to that question, please. A. What?

Q. $39.75? A. Oh, that could be—$39.75—that could
4541 be $22.75.

Q. $49.75? A. $49.75?

Q. Yes. A. $35 market.

Q. $65? A. Possibly $39.75.

Q. Now, I notice that in your Department No. 338, as contrasted with your Department No. 371, your prices are generally in the .75 cents rather than in the 95 cents market; for example, your price range in Department No. 371 for $10.95 is reflected in your Department No. 338 as $10.75; I further notice that in your Department No. 371 your price range of $12.95 appears, whereas in your Department No. 338 you show a price of $12.75. In your Department No. 371 for your price range you show $16.95, whereas in your Department No. 338 you show $16.75. I
4542 also notice that you have in your Department No. 371 the $19.95 price while in Department No. 338 it is $19.75. Would you say that generally that those departments—that in Department No. 338 your prices of the garments which you sell have the ending $.75 rather than $.95, but that the garments are the same? A. You mean they are bought in the same cost market?

Q. Yes. A. Yes.

Q. Now, from what cost market do you obtain the garments that retail at $125? A. Retail?

Q. $125. A. Well, that could be within any market from $75 possibly to $89.50 cost.

Q. $75 to $89.50 cost? A. Yes.

Q. What about your garments that retail at $115? A. Probably $79.50 cost market.

Q. What about the garments that retail at $100? A. $70 to $75.

Q. What about the garments that retail at $89? A. Probably the $69.50 or $65 to the $59.50 garments.

Q. That would vary from $59.50 to $69.50? A. Yes.

Q. What about the $79.95? A. Probably $59.50 or $52.50 market.

Q. What about the $69.95? A. Around $49.75, it could 4544
be a little more or a little less.

Q. What about the garments that retail at $35? A. $19.75 or $22.50 market.

Q. What about the garments that retail at $22.75? A. They could cost $12.75, $15, or $16.75.

Q. What about the garments that retail at $15? A. $8.75 market.

Q. Now, do you know of any retail prices at which dresses are sold at, in your store, other than the prices I have just recently given you?

Mr. Haycraft: I object to that unless it is confined to this department.

Mr. Weisman: I want to know whether he knows anything else about the store; if so, I want to know what he does know about the store. I think 4545
it has an important bearing upon the weight, credit, faith and value which may be given to his testimony.

Examiner Bennett: I will sustain the objection unless it applies to his department.

By Mr. Weisman.

Q. Do you not, as part of your duties, know as to what is going on as to prices in other departments? A. My duties and my activities are confined to my department, but I have some sort of an idea of what priced garments are handled in other parts of the store.

By Mr. Weisman.

Q. Of course. Do not price lines of dresses in other parts of the store, to some extent, affect you in your departments? A. Yes, sir.

4547 Q. And your store is one comprehensive whole; is that correct? A. Yes.

Q. The same woman that buys a dress in Department 331 may and frequently does visit other departments in your store; is that so? A. Yes.

Q. So, in the course of your duties you generally know the price ranges that your store handles and sells its merchandise at; is that so? A. Not specifically, but I have an idea.

Q. Yes. Will you tell us, based upon that idea of yours, whether or not the various price ranges which I have given you, which go from $3.95 to $125, generally embrace all of the price ranges that are used in your store? A. There are some other price ranges also.

Q. What are the others? A. Dresses can be purchased
4548 as low as $1, dresses which are commonly known as a house dress.

Q. That is a cotton dress, is it? A. Yes, it is a house dress.

Q. Yes, I know what it is. Aside from those cotton dresses, which we all know about, a sort of Mother Hubbard, you mean? A. Well, you seem to know the term correctly.

Q. Now, aside from that type of dress, I am not concerned with those, what have you? A. There are times when we have reductions in prices and those times—at those times we would have a sale and sell the dresses for less.

Q. Aside from reductions, I want to get whether or not this includes your general average? A. I would have to add $2.95 and up.

Q. We have covered only $3.95, we commenced with that? A. Yes.

Q. As to $2.95, what do you say is your average wholesale cost? A. The average wholesale cost of $2.95 merchandise would be $1.87½. 4550

Q. $1.87½? A. $1.87½.

Q. And when you said up to—"and up", you meant $125 retail? A. Yes, to $125 retail.

Q. That covers the range, does it? A. It does.

(The witness was temporarily excused.)

Mr. Weisman: May we adjourn at this time, your Honor?

Examiner Bennett: We will adjourn now to resume to-morrow morning at 9 o'clock A. M., Eastern Standard Time, in this same room.

Mr. Freeman: May it please your Honor, I should like to make a statement on the record before you adjourn. 4551

Examiner Bennett: The adjournment is set aside. Mr. Freeman, you may proceed.

Mr. Freeman: On behalf of Strawbridge & Clothier, I understand that counsel for the respondent herein has requested Mr. Chance, the witness now on the witness stand, to produce certain data and information with reference to the sources of supply or resources as Mr. Chance has called them.

I have stated to Mr. Chance's superior that if that information is so confidential that its disclosure would seriously or might seriously injure or impair his business or the business of his employer, namely, Strawbridge & Clothier, he need not disclose it at this time.

Examiner Bennett: Very well.

Mr. Weisman: May it appear also, with regard to this statement made by Mr. Freeman, that I did not ask for the names of any of the resources. I merely asked for the number of the people with whom he did business during that particular period of time.

4553

I also wish to refer Mr. Freeman to Section 10 of the Federal Trade Commerce Act and I wish to advise him and his client that with regard to all papers that they may refuse to produce or the production of which may be refused by any witness which has taken the stand that I shall move duly before the Commission for an order pursuant to Section 10 to punish the witness or fine him because—as the case may be, because of his failure to produce the papers.

Mr. Haycraft: I move that the last statement be stricken from the record because it is not properly made by counsel and may be only made by the Court.

4554

Mr. Weisman: That is your opinion. My opinion is different.

Mr. Haycraft: I am right and you are wrong.

Mr. Weisman: You are wrong and I am right. That is where we differ.

Examiner Bennett: This matter is physically in the record and I see no object in striking it formally.

Mr. Haycraft: I wish also to call attention, Mr. Examiner, to the fact that in the record the original request made by counsel was for the list of the resources and that this amendment is now made.

Mr. Weisman: I do not recall making any request other than this. I do not care to have a list of the people. I want the number of people with whom they did business as against and including therein all the people that they did business with through that period in order that we may compare the number of Guild houses with whom they did business with the number of non-Guild houses with whom they did business. 4556

The reasonableness, the pertinency and the desirability of this evidence I do not think can be questioned. I am surprised that any fair-minded person would object to its being received in evidence. As to others, I cannot say that I am surprised at anything they might do.

Examiner Bennett: Let it be so understood that this is the request and I will advise the witness, as I have advised other witnesses, that while he is under no obligation to do so; that is, that while he is under no obligation, as far as the Examiner is concerned, to do so, the Examiner has no objection to his doing so.

The Witness: Thank you, your Honor. I appreciate your advice on that point. 4557

Examiner Bennett: Have you anything further to state, Mr. Freeman?

Mr. Freeman: No.

Examiner Bennett: And Mr. Haycraft?

Mr. Haycraft: No.

Examiner Bennett: And you, Mr. Weisman?

Mr. Weisman: That is all, your Honor.

Examiner Bennett: Very well. We will now take an adjournment in this case to resume to-morrow morning at 9 o'clock A. M. Eastern Standard Time, in Room 313, Federal Building, Philadelphia, Pennsylvania.

(Whereupon at 3.45 o'clock P. M., August 5, 1936, the hearing in the above-entitled matter was adjourned.)

Court Room No. 313,
4559 U. S. Post Office Building,
Philadelphia, Pa.,
August 6, 1936.

Met pursuant to adjournment, 9 A. M.

Before: JOHN W. BENNETT, Examiner.

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

MILTON S. WEISMAN, Esq., GEORGE FELDMAN, Esq., HERBERT S. KELLER, Esq., and M. A. ALBERT, Esq., appearing for the Fashion Originators Guild of America, Inc.

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ALLEN S. OLMSTED, 2ND, Esq., of SAUL, EWING, REMICK & SAUL, 2301 Packard Building, Philadelphia, Pa., appearing for John Wanamaker of Philadelphia.

PAUL FREEMAN, Esq., appearing for Strawbridge & Clothier, Philadelphia.

I. I. JAMISON, Esq., of SUNDHEIM, FOLZ & SUNDHEIM, 1632 Bankers Securities Building, Philadelphia, Pa., appearing for Lit Brothers, Philadelphia.

PROCEEDINGS.

Examiner Bennett: Be in order, please.

Mr. Weisman: May it please your Honor, I wish to call your Honor's attention to the fact that yesterday I had failed to note in the record that Mr. Freeman, personal counsel for Strawbridge & Clothier, sat at the counsel table with counsel for the Government, assisting in the presentation of this case. I wish to make such notation in the record.

I also wish to make the same notation as to Mr. Freeman's present attendance at the counsel table and advising with counsel for the Government as to the state of the record. I wish to note the respondents' objection thereto. 4562

I further wish to note in the record an objection to the attitude of counsel for the Commission in seeking to keep from respondents and from the Commission a full statement of all of the matters that are pertinent. I wish to take exception to the matter of the presentation of this matter. We saw it in New York, we saw it in Boston and we have it here. Matter is produced which is only part of the matter. An example of this is when I asked the witness concerning the total number of manufacturers with whom they did business, "There is such a list, but it isn't here." The only thing that has been produced is the list of Guild manufacturers. I give this as an example. It is my belief from a reading of the cases and the law applicable to these proceedings that it is the duty of counsel for the Commission to present to the Commission and to your Honor all relevant matter tending on the issues, and that from that the Court may make such inferences as are proper. 4563

Examiner Bennett: What is the function of the attorney for the Commission in a case of this sort? Don't you think counsel is competent to present his side of the case?

Mr. Weisman: No. I think it is the duty of counsel for the Commission to present all evidence that comes

from these witnesses, not merely part of the evidence. I think from all the evidence and such additional evidence as counsel for the respondent may introduce the Commission is then to draw such inferences as are proper.

I also wish to call the attention of your Honor to this fact, that this type of proceeding, wherein I am not or there isn't put before the Commission all of the evidence on a particular matter such as I adverted to, will just duplicate the time, effort and money that has got to be spent in this case by the respondents and by the Government. In other words, by reason of this procedure we must now, after going around this circuit of cities at the
4565 behest and direction of counsel for the Commission, we have got to do it all over again on our own case to adduce and subpoena and by subpoena from witnesses the very thing that they could have produced in the first instance.

Examiner Bennett: How long is this statement going to be?

Mr. Weisman: Beg your pardon?

Examiner Bennett: How long is this statement going to be?

Mr. Weisman: I am almost finished.

Examiner Bennett: I am not going to entertain a long argument because this argument should be presented to the Commission. According to the rules of procedure, the rules follow in a general way the rules of procedure of all
4566 judicial bodies; that is, it is assumed that the person presenting the affirmative case presents such a case as he thinks will be useful to him. He doesn't assume to advise and present the case of the other side if they have counsel. If they haven't counsel, they will do differently; but if they have counsel, counsel knows what he wants to present and they have a chance to present their case and are given a full opportunity. So that I think that is the procedure.

Now, as to the attorney who is here for Strawbridge & Clothier, he appears here for the witnesses which have

been furnished from that organization. I think he has a right to watch the procedure and see that their rights are protected, so that I don't see—it is all right to call attention to it. I am perfectly willing to have it in the record. I doubt that any adverse conclusion can be drawn from it.

Mr. Weisman: All right, your Honor. I have finished my statement.

SAMUEL J. CHANCE resumed the stand and testified further as follows: 4568

Cross-examination (continued) by Mr. Weisman.

Q. I show you Commission's Exhibit 415 and call your attention to the figure in the first, second, third, fourth column next to the last, showing the total of business done in the Guild departments in the five months in 1935. Do you notice that (indicating)? A. Is this the figure you have reference to (indicating)?

Q. Yes. A. Yes, sir.

Q. And I notice from that the total business that you did in the Guild departments during the five months was $366,000— A. $500.

Q. —$500. That is approximately $72,000 a month; is that not so? A. Yes. 4569

Q. Now, assuming that the month of January is an average month, as the other months are, or that you would do the same in that month, that would then bring the total up for the first six months to what sum? A. You are basing your figure on an assumption?

Q. Yes, taking—dividing those months by five. A. About $445,000—$440,000.

Q. About $445,000. And I do believe that you said yesterday that the first six months of the year in volume.

without trying to be exact, was substantially equal to the last six months? There wasn't any great difference one way or the other; is that so? A. I did say that.

Q. So that, based on that assumption, would you say that a fair figure as a round number the Guild departments in the year 1935, twice $445,000, or approximately $900,000, or thereabouts? A. That is your estimated figure.

Q. Isn't that a fair estimated figure on the basis of these exhibits and your testimony? A. Well, I will accept that as an estimate.

Q. Fair? A. Yes.

Q. That is all. May I have that back? A. Surely.

4571 Mr. Haycraft: May I see it just a moment?

Mr. Weisman: Yes, surely. Do you want me to stop while you look at it?

Mr. Haycraft: Just a moment.

Mr. Weisman: All right.

By Mr. Weisman.

Q. I remember that you—I withdraw that—the merchandise that you purchased for these various departments is subject to a trade discount, I think you testified yesterday? A. I do not quite understand the question.

Q. I will reframe it. When you have a purchase price of merchandise from a manufacturer, the amount of that bill is subject to a discount? A. That is correct.

4572 Q. What is that discount? A. Well, that depends upon the arrangement made at the time of the purchase. It varies with each purchase. Each purchaser's discount may be different.

Q. What else is likely to make it vary in any way? A. I do not know.

Q. Did you ever hear of group buying by the A.M.C.? A. I have.

Q. Have you ever heard that through such group buying the discount is made to vary? A. I have so stated that discounts vary.

Q. I know what you so stated generally; now I am asking you that direct question. A. Yes, I have known it to be.

Q. As the buyer of the House Dress Department, have you from time to time made your purchases through the A.M.C.? A. I personally have not.

Q. Has the department or has anyone acting under your instructions or with your knowledge or under your directions so done? A. Not to my knowledge.

Q. Or under the direction of the house itself? A. No.

Q. Do you mean to tell us that you do not know of any 4574
time while you were connected with Strawbridge & Clothier where your orders—where the orders of Strawbridge & Clothier for merchandise in the Dress Department was placed through the A.M.C.? A. That is a fact and I have so stated.

Q. That you do not know it? A. That I do not know it.

Q. What do you mean by that when you say "I do not know it"? Do you mean that you do not see it or did not see it personally done, are you hiding behind the exact knowledge, or do you mean that you never heard of its being done in the usual and ordinary course of your business?

Mr. Haycraft: I object to that.

Examiner Bennett: Do you want his hearsay? 4575

Mr. Weisman: No, I do not want his hearsay.

Mr. Haycraft: That is what he is asking for. Why ask for it?

Mr. Weisman: Is that nice? I want to demonstrate how cleverly this witness can fence when he does not want to answer as contrasted with how little he knows when he is under cross-examination.

Mr. Haycraft: I move to strike that statement.

Mr. Weisman: I am entitled to reply to the Court and give my reasons.

Examiner Bennett: It may be stricken.

Mr. Weisman: Exception.

By Mr. Weisman:

Q. What did you mean when you said you did not know it? A. You had asked me a question prior to that which had a relation, if you are going to take that—if you will go back to your question, that will probably be clearer to you.

Q. I will state it again. I will start all over with you.
4577 I want to assure you of my utmost patience on this subject. A. Thank you.

Q. Do you know what the A.M.C. is? A. Yes, I have so stated in my testimony.

Q. Have you heard that your store is a member of the A.M.C.? A. I know that as a fact.

Q. That is one thing that you really do know? A. Yes.

Q. As such member, do you know whether or not it frequently—I withdraw the word "frequently"—that it ever engaged in purchases of dresses with the A.M.C.? A. I believe it has engaged in some purchases. I have heard of some things, but, personally, have not entered into any such arrangement with them, or any such purchases.

Q. I see. Now, when you heard about these purchases
4578 being made by the firm of Strawbridge & Clothier through the A.M.C., did you also hear as to what was the purpose of using the A.M.C. in these purchases? A. I have heard of no specific reason.

Q. What general reason? A. The general reason would be to make a more advantageous purchase.

Q. What do you understand by the words "more advantageous purchase"? A. Advantageous to the purchaser. In the form of a saving that can be effected because of a large commitment that would enable the manufacturer

in turn to purchase his goods at a price concession, the basis of that saving being that, and, based upon that saving, passing that saving on to the stores that participated in any such buying.

Q. Did you ever hear that that advantageous purchase would take the form of an extra discount?

Mr. Haycraft: That is objected to.

Examiner Bennett: That is merely conjecture or hearsay, is it not?

Mr. Weisman: No, it is not conjecture. I am asking him if he ever heard of it in his business.

Mr. Haycraft: It is hearsay and should not be admitted. 4580

Mr. Weisman: Suppose you let the Examiner pass upon that.

Examiner Bennett: I will sustain an objection to the question in that form.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. When you say you heard these things, do you mean that you heard them in the performance of your duties? Is that where you heard them?

Mr. Haycraft: I object.

The Witness: Do you sustain the objection, Judge? I am sorry, I thought I heard that. That is why I did not answer. 4581

Examiner Bennett: You may have an answer to that question. If he heard it in the ordinary and regular course of business you may have an answer.

Mr. Weisman: I think that is correct. I think the question incorporates that, if the question can be read.

Examiner Bennett: The question may be read.

(Question read.)

By Mr. Weisman.

Q. I will ask you that in the regular and ordinary course of your business. A. In the regular and ordinary course of business I have heard the expression used quite frequently.

Q. Quite frequently. Now, just one other question, one other statement on the record——

Mr. Weisman: I understand that as I asked the last question Mr. Freeman motioned to the witness. I do not wish to imply that he motioned to the witness to what the answer should be or what it should not be, or anything of that kind, but he did
4583 motion to the witness, and I ask that he be requested to refrain from motioning to the witness during the time when I am interrogating the witness.

Examiner Bennett: I will request that there be no communication with the witness by anybody other than the cross-examining or examining counsel while the witness is on the witness stand and in the presence of the Examiner. No communication of any kind whatsoever by any method should be indulged in. I will request that it be refrained from from now on. if there has been any.

By Mr. Weisman.

Q. You observed that motion that Mr. Freeman made to
4584 you a moment ago? A. Yes, I did.

Q. You saw him motion to you? A. I saw him motion to me.

Q. What did you understand by that motion that Mr. Freeman made to you? A. I understood that motion was for me to consult the Examiner on that particular answer before I answered your question.

Q. I see. Before you answered my question. As divisional merchandise manager of these departments of

Strawbridge & Clothier, have you or has anyone under your direction used any aid or used any instrumentality from the A.M.C. during the past, during the period from February 1 to date, in connection with its placement of orders for that department or any of these departments?

Mr. Haycraft: I object as incompetent, immaterial and irrelevant and not proper cross-examination.

Examiner Bennett: I think it is hearsay and repetitious. I will sustain the objection.

Mr. Weisman: Exception. I offer to prove that if the witness has been permitted to answer, that the answer would have been in the affirmative. 4586

Mr. Haycraft: I ask that that statement be stricken.

Examiner Bennett: No.

By Mr. Weisman.

Q. With regard to the dress business generally, is there not, to your knowledge, a well-defined and generally known trade discount in the New York market? A. Yes, that is so.

Q. What is that generally well-defined and well-known trade discount? A. 8 per cent. discount.

Q. When you say "8 per cent. discount," do you mean 8 per cent. from the face of the bill? A. That is right.

Q. In connection with Commission's Exhibit No. 410, which I now show you, will you tell me whether or not 4587 this was made up after or before the deduction of the discount? A. This is made up before the deduction of the discount.

Q. In other words, that 169,000-odd dollars is actually about $12,000 more than you actually paid; is that so? A. That is right, which has no reference to the retail price.

Q. I did not ask you whether or not it had any reference to the retail price, did I? A. No.

Q. You just threw in another bone; is that right? A. Well, I suppose you might call it that.

Q. I asked you whether or not this had any relation to the amount actually paid, and you said, I understood, no, that that was the total amount of the bill. A. Subject to the 8 per cent. discount.

Q. Subject to the 8 per cent. discount. You did not tell us, when you offered this in evidence, that the $169,000 was subject to an 8 per cent. discount, did you? A. I was not asked that.

Q. And you felt that you should keep it a secret until counsel for the other side would find it out if he were
4589 astute enough to do so, or fortunate enough to do so?

Mr. Haycraft: I object as incompetent, immaterial and irrelevant.

By Mr. Weisman.

Q. Is that what you thought?

Examiner Bennett: Objection overruled.

Mr. Haycraft: Your Honor, I think that is highly objectionable.

Examiner Bennett: No. You may answer.

By Mr. Weisman.

Q. Is that what you thought? A. No, sir.

4590 Q. Well, when you give this exhibit as $169,000, without regard to the amount that was actually paid, you were seeking to make it appear that you did more business in dollars and cents with the Guild houses than you did actually do; is that so? A. No.

Mr. Haycraft: I object.

Examiner Bennett: Overruled.

By Mr. Weisman.

Q. Is it a fact that under no circumstances did you pay the Guild houses during the period February 1, 1935 to January 31, 1936, $169,798.14? A. Did I? No. And I never tried to make that out.

Q. Does this exhibit not state that is the amount of such purchases? A. Those are the purchases we had made with the Guild houses for that period.

Q. That is the "amount of business transacted from February 1, 1935 to January 31, 1936." As a matter of fact, that figure of $169,798.14 was taken from the face of the bills, was it? A. That is right.

Q. And is subject to an 8 per cent. discount? A. That 4592
is correct.

Q. Which would bring it down by approximately $13,000; is that not so? A. That is right.

Q. So that the total amount of business at most that was done, according to that exhibit, would be about $155,000?

Mr. Haycraft: Objected to.

By Mr. Weisman.

Q. Is that not so?

Mr. Haycraft: The exhibit speaks for itself.

Mr. Weisman: The exhibit does not speak for itself. 4593

Mr. Haycraft: Why, certainly it does.

Mr. Weisman: If it does, it speaks untruthfully.

Mr. Haycraft: It does not speak untruthfully. That is a correct statement of the transactions.

Mr. Weisman: Well, now, we are going to see. May we have an answer to this question?

Examiner Bennett: I will overrule the objection.

Mr. Weisman: May we have the question?

Q. (Question read.) A. That is correct.

Examiner Bennett: Let us have that clear. Those figures were gross figures?

The Witness: That is right, sir.

Examiner Bennett: Yes, I see.

The Witness: It is a regular term that we use in all our——

By Mr. Weisman.

Q. Let me ask you this question: Do you know from what this was made up (indicating)? A. Our accounts payable department made that particular paper up for me.

4595 Q. I don't ask you who made it up. I ask you, do you know from what it was made up? A. No. I couldn't attest to that, whether it was made up from invoices or records or books of any kind.

Q. Isn't it important to know whether or not it was made up from invoices or whether it was made up from records? A. It was made up from records which are accurate and I assume are such that when I call upon the accounts payable department to give me a record of that kind, that they will, in all fairness and truthfulness, submit to me a record which is correct.

Q. I see. Now, what did you ask them to give you? A. I asked them to give me the amount of business transacted with the particular resources which I submitted to

4596 them on a paper.

Q. In other words, as I understand you, yesterday you said you called up somebody in the statistical department, the name of the person you didn't know——

Mr. Weisman (to Mr. Freeman): Will you stop interrupting my examination, Mr. Freeman?

Mr. Freeman: I am not interrupting.

Mr. Weisman: Yes, you are, when you jump up and grab a paper. Will your Honor please request

this man not to persist in such gross misconduct? May I have the question read?

(Question read.)

By Mr. Weisman.

Q. (Continuing) —and you told them that you wanted this made up; is that so? A. No, sir, I did not.

Q. Well, let's see. Whom did you ask to make up Commission's Exhibit 440 for you? A. I put a requisition through the mail.

Q. Where is your statistical department? A. It is in the store and any mail that I wish addressed that I wish to reach that department, all I need to do is to address 4598
an envelope it is carried to them in the regular store mail.

Q. Have you got a copy of what you asked them to make up for you, a copy of the letter that you sent them? A. No, I haven't.

Q. Did you make a copy of the letter that you sent them? A. I don't recall.

Q. Well, how is it that you recall what you asked them but you can't recall whether you had a copy of it? A. I have a girl taking care of that for me, a stenographer that will do as I wish.

Q. I don't care what you wish. Don't you wish right now you had a copy of what you asked them for? A. Not necessarily.

Q. In other words, you are quite content to rest on your 4599
memory. A. I don't quite understand you.

Q. Well, let me ask you this: Don't you know that there would be a great difference if this list had been made up from invoices as against the fact if it were made up from the amounts you actually paid to the people? A. There would be a difference, yes.

Q. Now, where would that difference come up from, what would it arise from? A. From the difference of discount.

Q. Is that all? A. That is all that I know of.

Q. Well, think a moment and see if you cannot think of another difference that might arise under those circumstances. A. Well, I know of no others.

Q. Well, just stop a moment and think and we will time you for three minutes. I want to see whether in three minutes you can think of another reason why these figures would be different if made up from the invoices than if made up from the amounts you actually paid?

Mr. Haycraft: That is objected to.

Examiner Bennett: I am going to let him answer.

4601 Mr. Weisman: What?

Examiner Bennett: I am going to let him answer that question.

A. I have no answer to it, Judge. I have no answer to it.

By Mr. Weisman.

Q. In other words, you don't know. Now, let me ask you this: If you made up this list from invoices, the amounts shown here would be shown before returns, wouldn't they? A. In which? I am sorry. I didn't hear you.

Mr. Weisman: We will read it again to you.

4602 The Witness: All right.

Q. (Question read.) A. Well, frankly I don't know whether returns are deducted from the invoices because I do recall of a particular place on the invoice to make notes of any returns that go back from the receiving room.

By Mr. Weisman.

Q. Don't you know that in your business, that when a return is made a credit memorandum is issued the invoice

is kept intact; isn't that so? A. We have made returns directly on invoices.

Mr. Haycraft: If you know.

By Mr. Weisman.

Q. I don't ask you what you have done. I ask you what is your practice in this great institution of Strawbridge & Clothier? A. I have told you that I had made returns directly on invoices.

Q. And I didn't ask you that. I asked you what is the practice generally, not what you may or may not have done. A. That is a question of bookkeeping. I am not interested in that. 4604

Q. No. No. You don't know, is that it? A. Assume it as such, yes.

Q. I don't want to assume it such. I want to find the facts from you. A. I have told you that that is a list which I asked to be submitted as——

Q. No. No. A. —as a corrected list.

Q. Look. You are going to have to answer my question as long as the Court sustains me and it won't do you any good fencing around with me. A. I am not fencing. I beg your pardon.

Mr. Weisman: May we have the last question; and I am going to get an answer from you if you know.

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Q. (Question read.) A. If I recall——

Q. No. I want to know whether you know that to be a fact. A. Yes, that is a fact.

Q. All right. A. All right. I will concede it.

Q. Why didn't you concede it in the first instance, instead of wasting ten minutes on it? You knew that all the time, did you not? A. I did not.

Q. Did you just find it out? A. I am conceding that to you. I still don't know, but if that will satisfy you, all right.

Q. If that is a fact, then this total that we now have down in fact to about $155.000 would be further reduced by the amount of such returns as were actually made during the year; isn't that a fair statement? A. I recall now in sending——

Q. No. No. Well— A. Yes.

Q. Yes. Now, I also notice here that in some cases— I will withdraw that question. Do you have any reason why the same name should appear twice on this list? A.
4607 No, I have not.

Q. Well, assume that the same name does appear twice, would that in your mind indicate that there has been a duplication? A. Not necessarily. It may be taken off a different ledger from different departments. I don't know.

Q. What is your best explanation of the fact that one or two names might appear twice on this list? A. I can't explain that. I did not make up the list.

Q. You testified as to the accuracy of this list. A. I still testify to it on the strength of our accounts payable department.

Q. And that is the limit of your endorsement of this list, that somebody, in answer to a letter, sent it to you? A. That is right.

4608 Q. Your statistical department? A. (Witness nods head affirmatively.)

Q. What is your best opinion of your total percentage of returns during the year as against the total that you do business with a manufacturer on? A. I have no opinion as to that. Frankly, for 1935 I have never seen any such figure. I have never gone into any discussion with anyone on that.

Q. Do you think it is 50 per cent. of your purchases? A. No, I do not think it is as great as that.

Q. Do you think it is 25 per cent. of your purchases? A. I doubt very much.

Q. Well, do you think it is 10 per cent. of your purchases? A. That is questionable. I mean, I have a——

Q. Well, do you think it is 5 per cent. of your purchases? A. I would say possibly between 5 and 10.

Q. So that if this list, Commission's Exhibit 410, was made up from invoices, and those invoices do not show the returns, the amount shown hereon would then be a fair assumption to say might be reduced by a further sum between 5 and 10 per cent., isn't that so? A. You are 4610
assuming that it is made up from invoices.

Q. Yes. Yes. A. Assuming that it is made up from invoices, since I learned from you that the memorandum is gone through, I would say yes.

Q. Well, look: If it were made up from anything but invoices, it wouldn't show the gross amount, but it would have shown the net amount; isn't that so? A. That is correct.

Q. So that is a fairly good indication that it was made up from invoices? A. Not necessarily. I won't attest to that.

Q. Now, I know that it isn't necessarily. I didn't say it was necessarily so. But I said it is a pretty good indication; isn't that fair? A. No, sir.

Q. All right. Yesterday I asked you certain questions 4611
about the comparative amount of advertising done in a certain department, 331, during a particular period, 1935 and 1936. Do you remember those questions, the tenor of them? A. I remember something with reference to that advertising and a few other things.

Q. And I asked you about the relation of the volume of goods, seasonable merchandise on hand, to sales? A. I recall.

Q. And I asked you about the space allotment; do you remember that? A. The advertising?

Q. And display. A. And display, yes.

Q. Allotment? A. Yes.

Q. Now, if I had asked you those same questions with regard to each and every one of the departments which you enumerated, would your answer be the same? A. It would; yes, sir.

Mr. Weisman: Will you so stipulate? I don't want to take up the time of going over with this witness each department. I think there are nine of them, Judge. We will be here for a long time.

4613 Examiner Bennett: Yes.

Mr. Weisman: It is stipulated, in lieu of the examination of this witness thereon, that if I had interrogated him with regard to departments——

The Witness: May I recall them for you?

Mr. Weisman: I would rather have them as they were testified to.

The Witness: All right. Thank you.

Mr. Weisman: I have no doubt that you would give them to me correctly, and you correct me if I am not right.

By Mr. Weisman.

Q. Department 419? A. That is right.

4614 Q. 373? A. Yes.

Q. 382? A. Yes.

Q. 385? A. That is correct.

Q. 491? A. You repeated that, didn't you?

Q. Did I mention it before? Thank you. 358? A. That is right.

Q. 338? A. That is correct.

Q. 371? A. You mentioned that once before, I believe.

Q. No, I didn't. A. I am sorry. 371 is correct.

Q. 331? A. That is correct.

Q. 350? A. Yes, sir.

Q. 492? A. (Witness nods head affirmatively.)

Q. And 493? A. That is right.

Q. I haven't left out any that came under your direction? A. No. Does that total eleven?

Mr. Weisman: Now read me what I have there.

(Record read as follows: "Mr. Weisman: It is stipulated, in lieu of the examination of this witness thereon, that if I had interrogated him with regard to departments Nos.——")

Mr. Weisman: 491, 373, 382, 385, 358, 338, 371, 331, 350, 492, 493, as I have with regard to departments Nos. 331 and 350, referring to his knowledge, 4616
or lack of knowledge, of the various matters queried for a comparison between the periods comprising of February 1, 1936 to June 30, 1936, as against February 1, 1935 to June 30, 1935, his answers would have been the same as they were with relation to the departments specifically mentioned. Is that all right?

Mr. Haycraft: If that is correct.

The Witness: Yes.

Mr. Weisman: Yes. That saves us a lot of time, Judge.

By Mr. Weisman.

Q. What do you understand by the meaning of the words 4617
"good will"? A. Good will, as I understand, is something that a store sells other than merchandise.

Q. What is that? A. It is something that a store attempts to sell other than merchandise.

Q. You say that your understanding of the term "good will" is that it is something that a store attempts to sell other than its merchandise? A. That is right.

Q. Well, let me see. A store attempts to sell things for the making of a profit? A. That is correct.

Q. Do you say that it attempts to make a profit on its sale of good will? A. Well, that could reflect in a profit over a period of years, whether that customer is satisfied with trading in that store and returns as a satisfied customer.

Q. Now, can you see good will? A. Can you do which?

Q. Can you see it? A. Yes, it can be shown.

Q. Can you measure it? A. I do not know as it ever has been measured in any way.

Q. Can you weigh it? A. It can be weighed.

Q. Yes. You mean you can ascribe to it a weight as a certain number of pounds? A. No.

4619 Q. And your best definition of good will is that it is something that the store sells besides its merchandise? A. That is correct.

Q. Is there a market where you can buy it for resale? A. No, sir.

Q. Where does the store get the good will—and what does it usually charge for the good will that you say it sells? A. It does not charge anything.

Q. Selling implies charging; do you mean that it is something that the store gives to its customers? A. Yes, sir.

Q. You are sure of that? A. I am.

Q. Do you not know that good will is something that the store gets from its customers; did you not ever know that? A. I said it gets good will and receives good will

4620 also.

Q. It gets good will and it receives good will also. When did you ever say it receives good will also? A. There is a connection there. The opinion of a customer as to the store.

Q. Now, wait a minute, let me understand what you mean. A. Yes.

Q. When you testified concerning the good will of certain departments were you testifying about the good will

that the store gave or the good will that it received? A. The good will that it received at that particular time.

Q. Also you testified about good will— A. Yes.

Q. —what did you understand by "good will" which it receives? A. By the good will it receives I—ah—ah—feel that it is the opportunity of that store to serve the customer so that it would like the store and feel that it should trade with the store because of the various co-operations and various other reasons.

Mr. Weisman: May I have that answer again? The witness dropped his voice and I could not understand it.

(The reporter read the answer as above set forth.) 4622

The Witness: That is not what I said.

Mr. Weisman: That is not what you said? Do you want to change it around now?

The Witness: It does not sound so good to me.

By Mr. Weisman.

Q. Oh, it does not sound good to you. A. It is not what I said there just at the end.

Q. Well, it is what I heard, but perhaps it is not what Mr. Haycraft would hear.

Mr. Haycraft: I did not say I heard anything.

The Witness: Judge, that is not what I said just at the end. 4623

By Examiner Bennett.

Q. Just what did you intend to say or do you think you did say? A. Because of its various co-operations and various reasons.

By Mr. Weisman.

Q. Now, that is exactly the same words you used in your previous answer because I wrote them down at the

time. Do you mean to tell me now that you cannot remember from one second to the split part of another second what you testified? A. Well, I do not know what you mean by that.

Q. We will pass it. We will pass it. Now, is that the best explanation you can give to us of what you understood and what you now understand by good will? A. That is my best explanation of good will.

Q. From the—let me ask you this: Strawbridge & Clothier have been in business a good many years, haven't they? A. Yes, sir, they have.

Q. What is your best—what is your knowledge or what
4625 knowledge have you as to that? A. As to what?

Q. How long do you think they have been in business? A. They have been in business some fifty odd years.

Q. Do you think that it had as much good will when they opened their store as they have to-day: Strawbridge & Clothier? A. You mean by comparison?

Q. I mean any way that you can think of. A. Well, they have grown to a large store so I believe that they have more good will to-day, because they are serving more patrons.

Q. You believe that they have more good will to-day because they are selling more patrons? A. More patrons and more customers and more business.

Q. Your idea of good will is the degree of size the store has is a test of the good will it has? A. Oh, yes.

4626 Q. That is the prime consideration? A. I do not understand what you mean by "prime".

Q. Do you know what the word "prime" means? A. Yes, sir.

Q. What does it mean? A. It means fine, utmost.

Q. No. Prime means "first". A. Yes, I am sorry.

Q. Is that the first consideration of your mind? A. You mean good will?

Q. No, no, no. Now, listen to the question, please. I will try to help you. You said a moment ago that you felt that the good will of a store would depend upon the size and the business that it did; is that what you said? A. No, I did not.

Q. What did you mean when you said it must have more good will to-day than it did before because it does more business? A. It has more patrons and good will is spread over many more people.

Q. Do you think that its good will with this particular people is greater now than when it commenced to do business? A. I do not understand the question.

Mr. Weisman: May the question be read? 4628
Examiner Bennett: Yes.

Q. (The question was read.) A. Yes.

By Mr. Weisman.

Q. Do you not really believe that good will is a matter that is built up through the years? A. I have so stated, yes.

Q. I do not care whether you have so stated or not, because you have stated a variety of things, but I want to know what you think now. A. Yes.

Q. Yes? A. Yes.

Q. Without regard to what you have so stated? A. Yes.

Q. The answer is "yes"? A. The answer is "yes." 4629

Q. Did it ever strike you that good will was synonymous with reputation? A. There is a connection.

Q. Would you say that the good will of a store was dependent upon the feeling of security and reliability of the store held by the customer, and a sense that he or she had that the store was trading fairly and honorably with the customer? A. That, among other things, yes.

Q. Well, now, I have given you those things and you have said "among other things"; give me some of the other things that are in your mind. A. One particular thing in my mind is service.

Q. Well, does not—is service included in what I have told you? A. May I hear that question again? What was that before that?

(The question was read.)

By Mr. Weisman.

Q. If you do not remember it—the question has been read to you, do you remember it now? A. Well, would
4631 you mind reading it again?

Q. Oh, my. If you do not remember it now, we will withdraw the question to save time. Now, let me ask you this: Is not good will, the good will of a store, dependent upon the belief in the customer's mind that the store gives her or him honest value for money spent? A. Yes, that is one of the things.

Q. Do you think that is one of the prime things, most important in the building of good will? A. Yes, sir, fair trade.

Q. What? A. Fair trade; that is one of the things.

Q. What would you believe is more important than that? A. Service is an important factor.

Q. No, no, no, no, no. I know there are many impor-
4632 tant factors. I am trying to find out what you believe is the most important factor. A. It is a question there as to the importance of one thing above another.

Q. Do you think that if you can give a woman plenty of service in the dress department you can give her poor value; is that what you want us to understand? A. I did not say so.

Q. Is not the prime consideration in the building up of good will in the dress business, or any other business,

the giving to the customer of good value for money spent; do you not know that? A. I said that is one of the things.

Q. Now, I am asking if, in your opinion, is that not the most important thing? A. I do not think it is.

Q. What, in your opinion, is the most important thing? A. I said there is no such thing as placing one thing above the other in the order of importance.

Q. Let me ask you this: Do you believe that manufacturers have good will? A. Some have.

Q. As a class are they susceptible of enjoying or possessing a good will? A. Naturally.

Q. Do you think that it is important to a retail merchant to possess good will? A. It certainly is important 4634
to anyone that wishes to remain in business.

Q. Do you think it is important to a manufacturer if he wants to remain in business to maintain his good will?

Mr. Haycraft: Objected to as incompetent, immaterial and irrelevant.

Mr. Weisman: He is testifying here—and he said naturally.

Examiner Bennett: Yes; I understand.

Mr. Weisman: He testified as to good will. I think it is very important for us to look into that.

Examiner Bennett: I know he testified to that, but that does not mean that it ought to be torn to rags and pulled all to pieces.

Mr. Weisman: I want to show that he does not 4635
know what he is talking about.

Examiner Bennett: That has been demonstrated —or not been demonstrated by this time. I think we have it now. I will sustain any objection as to questions about good will of the type you have been asking.

Mr. Weisman: I will ask him just one more question.

By Mr. Weisman.

Q. Do you not know, or do you know, whether or not women buying dresses like to have individuality in connection with those dresses? A. Yes. There are many woman who prefer that.

By Mr. Weisman.

Q. Do you know whether or not does she—let us say you have a $19.75 original style and you sell that for $19.75, that when there is a copy in the market it appears at a generally lesser price, does it not?

4637 Mr. Haycraft: I object to it as incompetent, immaterial, and irrelevant.

Examiner Bennett: I will let him answer.

A. Not always. Some manufacturers will copy for the same retail price.

By Mr. Weisman.

Q. I did not say "not always." Generally, not always. I did not ask you what happened always. You and I know that copying is copying down. A. How can I attest to what somebody else does?

Q. You have bought copies, have you not?

4638 Mr. Haycraft: That is objected to as incompetent, immaterial and irrelevant, Mr. Examiner.

Examiner Bennett: Overruled.

A. I have bought copies in my experience.

By Mr. Weisman.

Q. When you buy copies of an original, you bought it because you wanted to get something selling at a lesser price, otherwise you would have bought the original? A.

Not always. There were times when I could not buy the original from the original maker, and had to buy the copy from somebody else.

Q. What about generally?

Mr. Haycraft: I object to that.

A. I cannot attest to generalities.

By Mr. Weisman.

Q. I mean——

Examiner Bennett: Overruled.

4640

Q. I mean in a general way. A. You are asking me to attest to generalities, and I cannot possibly do so.

Mr. Haycraft: I object to that, if your Honor please. The witness has stated that he could not answer the question in that form, and I do not think it is proper for you to interrogate him further along that line.

Mr. Weisman: Let us see what the Examiner thinks about it.

The Witness: I do not understand what he is driving at.

Mr. Weisman: I have lots of time. I want an answer to my question.

Mr. Haycraft: I object.

4641

Examiner Bennett: The objection is overruled.

The Witness: May I have that question again, please?

Mr. Haycraft: I object to that.

(Question read.)

Mr. Haycraft: I object to that. The witness has indicated that he cannot answer that question in his previous answer.

By Mr. Weisman.

Q. If you cannot answer that as divisional merchandise manager, I should like to know it. A. I cannot.

Examiner Bennett: What is your answer?

The Witness: I cannot answer that, Judge. It is too general a statement.

By Mr. Weisman.

Q. Let me ask you this question: Assume that a woman buys a dress in your dress Department 331, and she paid for that dress $19.75, and she saw a copy of that dress in
4643 a competitor's shop for $10.75. Have you any opinion as to what the effect of that copy would have on the good will of your store with that woman?

Mr. Haycraft: I object to that question as improper, incompetent, immaterial and irrelevant, and ask that it be stricken physically.

Examiner Bennett: Overruled.

You may answer. The question is, have you an opinion?

The Witness: Yes, I have an opinion, Judge, that is in the records, and I have attested to that, but I would hesitate to give it here.

By Mr. Weisman.

4644 Q. What is your opinion?

Mr. Haycraft: I object to that as incompetent, immaterial and irrelevant, and not proper cross-examination.

Examiner Bennett: Overruled. You may answer.

A. It may have some effect upon the good will in some cases, and in other cases it would not.

By Mr. Weisman.

Q. What effect would it have on the good will? A. It would have an adverse effect until we were able to convince the customer that there is a difference between both garments.

Q. What do you mean, you can convince the customer that there is a difference between both garments; what do you mean by that? A. I have in this business—I have been in this business long enough to know that there is no woman, or no man, that can give you for less money what another man will charge you for more money.

Q. In other words, you say that while these goods, that while they look alike to the layman on first inspection, you 4646
can show to that customer that there is a difference between those garments? A. Yes, sir. I have done so many times.

Q. You have? A. I have demonstrated by having both garments alongside of one another, and had many customers purchase the original in preference to the copy.

Q. To show that the copy while merely giving the appearance of being the same was usually inferior? A. That is right.

Q. Yesterday I asked you this question: "Q. Did you, in the practice of your duties as divisional merchandise manager, know there were and are regularly issued a large number of directories setting forth the names and addresses and the price lines of the various manufacturers; 4647
did you ever hear of that?" To which you answered as follows: "A. Yes, sir." I then asked you this question: "Q. Did you examine any such directories?" To which you answered as follows: "A. I have quite a few directories that I went through. I went through quite a number of directories, yes." Do you remember hearing those questions and do you remember making those answers? A. Yes.

Q. I now show you Respondents' Exhibit No. 21 for Identification, and ask you whether or not in that particular one—not this particular book which I am showing you, but whether or not the Fairchild's Women Wear Directory of New York City is one of the directories that you went through? A. Yes, sir.

Mr. Haycraft: That is objected to, Mr. Examiner, and I move to strike the answer as repetitious.

Mr. Weisman: There is no repetition there, if your Honor please.

Examiner Bennett: I will sustain the objection.

4649 That is repetition of what we went over yesterday.

Mr. Weisman: We did not ask him whether he went through that directory or not.

Examiner Bennett: I think you did. All of those directories he said that they were available, and he used them for certain purposes, getting telephone numbers and so forth.

Mr. Weisman: I am not going to press the examination of the directories any further because I understand that your Honor has ruled that we may, on our case, tender the directories.

Examiner Bennett: Yes, you may tender them if they are properly identified, of course, by you. The motion is granted.

4650 Mr. Weisman: I except and offer to prove that if the witness were permitted to answer the answer would have been in the affirmative.

By Mr. Weisman.

Q Yesterday when I queried you about the numbers—the people and the concerns that made dresses, you were aware of the wholesale price—the Guild members, I mean—you stated that you knew the Baron Dress Company

price? A. What is that question again, please? I did not understand it.

Q. Well, perhaps it was a bit mixed up. Yesterday, when I queried you about the Guild members' prices of dresses, you were aware of the wholesale price, you stated, of the Baron Dress Company price; is that so? A. Yes, sir; I believe I did.

Q. You also said, told us, that you knew the wholesale price on garments manufactured by the Baron Dress Company, did you not? A. Yes, sir.

Q. What was the wholesale price of the Baron Dress Company at about February 1, 1936?

Mr. Haycraft: I object. That is already in the record. 4652

Mr. Weisman: I do not believe it is.

Examiner Bennett: I think you are going over the same ground again.

Mr. Weisman: This is just a foundation question. I will promise to finish quickly with this witness, your Honor please.

Examiner Bennett: Overruled.

A. I do not remember attesting to any particular price, or to any particular month. I mentioned that $10.75 and up was the cost price of my experience with that manufacturer—that my experience was with the manufacturer, I should say. 4653

By Mr. Weisman.

Q. Was $10.75 the cost price at February 1, 1936, at the time the Guild houses stopped doing business with you? A. No. I do not think so. I do not know that it was.

Q. Do you not know that it was not? A. I do not know. I simply do not know.

Q. How did you learn the cost price or the wholesale price of the Baron Dress Company merchandise, and you

do not know anybody else except C. H. D. Robbins out of that whole group of manufacturers? A. They are the only two that I remember definitely making inquiries to, or either visiting their particular showrooms.

Q. Did you visit their particular showrooms since February 1, 1936? A. No.

Q. How did you know— A. I am sorry. I have since February 1; yes, sir.

Q. Whose showrooms have you visited out of that group since February 1, 1936? A. I have visited the Baron Dress and C. H. D. Robbins.

Q. When did you visit C. H. D. Robbins? A. C. H. D.
4655 Robbins I visited some time in the early part of February.

Q. Is it a fact that you are getting all the merchandise that you want now from the Baron Dress Company? A. You asked me whether I visited the showroom.

Q. No, no, no, no, no. Listen to the question I have just asked you and look at me. I know I am pretty hard to look at but I will not motion to you as to how to answer the question, anyhow. A. Yes, sir; we are getting all of the merchandise that we want now from the Baron Dress Company.

Q. As a matter of fact, you have been getting all the merchandise that you wanted from the Baron Dress Company ever since February, 1936, have you not?

Mr. Haycraft: February 1 or what? What date
4656 in February?

Mr. Weisman: I would like to find out from the witness. He can tell us the date.

Mr. Haycraft: I object. It is too indefinite.

Examiner Bennett: Sustained. Make it definite.

By Mr. Weisman.

Q. From February 15, 1936? A. I do not know.

Q. From February 28, 1936? A. I do not know what time the Baron Dress Company resigned from the Guild.

Q. Do you know the circumstances under which they resigned from the Guild? A. I am not acquainted with that, no.

Q. Did you ever discuss it with them? A. No, sir.

Q. Do you remember that at the time that Strawbridge & Clothier severed relations with the Guild that the Baron Dress Company formed another subsidiary dress company? A. I am not acquainted with what they formed.

Q. Or with any other company with the same principals as the Baron Dress Company? A. What do you mean by principals?

Q. Who are the members of the Baron Dress Company? A. I know Mr. Baron only. 4658

Q. Is that all? A. And Mr. Feldman.

Q. Mr. Feldman? A. Yes.

Q. If you know Mr. Feldman why did you so glibly say you knew Mr. Baron only? A. I am sorry. I know both of them.

Q. Think a little longer and see if you can correct this again. A. Mr. Baron and Mr. Feldman, that is all.

Q. I would like to ask you a few questions. I couldn't help observing that when the recess was declared you immediately went into conference with Mr. Freeman; is that right? A. That is correct.

Q. Did you discuss with Mr. Freeman the testimony you were going to give when you returned to the stand? A. We did discuss something. I wish to state what we discussed, but since you wish it to wait, I am quite willing. 4659

Q. Without any implication to Mr. Freeman, who is a respected member of the bar, may I take it, then, that your discussion was directed solely to a correction of your previous testimony that you sought to make? A. No.

Q. Was it directed to guiding you along the lines that your subsequent testimony should take? A. You requested something——

Q. No. No. Was it along that line? A. No, sir.

Q. Well, now, was it merely with regard to the papers that Mr.—or the names that Mr. Freeman made a speech on in the record, concerning which Mr. Freeman made a speech on the record last night? A. That is right.

Q. And was it limited wholly to that? A. Yes.

Q. Did you bring with you the list of manufacturers, the total list, that was requested of you last night?

Mr. Haycraft: Objected to, Mr. Examiner. The witness was not requested to bring a list of manufacturers.

Mr. Weisman: He was requested.

Mr. Haycraft: He was requested to bring the
4661 total number.

Examiner Bennett: He was requested to bring the total number.

Mr. Weisman: Yes. Well, all right.

Examiner Bennett: Of course, he is protected by statute against disclosing his customers if he doesn't choose.

Mr. Weisman: I didn't ask him to disclose his customers.

Examiner Bennett: Well, I understood you were simply asking him——

Mr. Weisman: For the number.

Examiner Bennett: —for the number.

By Mr. Weisman.

4662 Q. You remember last night that I said to you that I would like a total number, I would like to have you ascertain the total number of manufacturers with whom the Department 350 did business during the thirteen months preceding February 1, 1936? Do you remember me asking you that? A. Was that at the close of the session last night?

Q. Yes. A. I think you are confusing the department number.

Q. Did you understand that it was 331? A. No, sir.

Q. 371? A. 371, yes.

Q. All right. Now, then, do you remember my making that request with regard to Department 371? A. That is correct.

Q. Did you find out the total number of manufacturers with whom the Department 371 did business during the thirteen months preceding February 1, 1936? A. You want the thirteen months preceding February 1?. Yes.

Q. Well, now, what was the total number of people with whom—of these manufacturers—with whom this department did business during that period? A. Seventy-three.

Mr. Haycraft: That is the total number of the 4664
Guild and non-Guild?

The Witness: That is correct.

Mr. Haycraft: Let the record show that the witness' memory was better than counsel for the respondents' on one occasion at least.

Mr. Weisman: Let the record also show that I haven't been tendered as a witness in this proceeding, that I am not under oath and testifying ad lib, but I am only asking questions. If you want the record to show something, Brother Haycraft.

By Mr. Weisman.

Q. Did you, by any chance, ascertain the number of manufacturers that Department 350 did business with 4665
during that same period?

Mr. Haycraft: He testified to that yesterday.

A. I have testified to the certain number. You asked me to get that particular report. In the questioning later on you simply took one figure and the total

By Mr. Weisman.

Q. No. No. You didn't understand me. Overnight you did look up your records and you ascertained that the total number of manufacturers with whom Department 371 did business during that thirteen-month period immediately preceding February 1, 1936, was seventy-three, I understood you to say. Is that correct? A. I didn't personally look it up. I had that figure made up for me while I was on the stand to-day.

Q. Yes. A. Yes.

Q. Did you find out the same information with regard to Department 350? A. I had it here for you yesterday.
4667 I do not remember what it was. I had a notation which I read to you, and part of that notation was accepted in your cross-examination.

Q. You say that yesterday you knew? A. Yes, I did know yesterday, but I answered your questions as you put them to me.

Q. Do you still know to-day? A. I don't remember what that question was.

Mr. Haycraft: I will hand the witness a paper that he had yesterday.

Mr. Weisman: He had this with him all the time?

The Witness: I had it in my hand reading, but you questioned me about certain phases of it.

4668

By Mr. Weisman.

Q. Do you know the total number of manufacturers with whom you did business during that period with regard to Department 350? A. Which period?

Q. The thirteen months preceding February 1, 1936. A. Yes, seventy-two.

Q. Seventy-two. Now, what about Department 331? A. I did not look that up.

Q. Can you look that up during the recess at lunch? A. I can have that done; yes, sir.

Q. And give us the total number? A. Sure.

Q. Will you do that with regard to 373? No. Look at me; will you do that? With regard to 373 department? A. I can, yes.

Q. Will you do that with regard to Department 382? A. There isn't anything in my testimony, I think, that refers to 382 as to resources.

Q. No, but I just would like to know. A. If the Examiner so rules, I will.

Examiner Bennett: Well, I have already advised you. I have already advised you that it is a matter 4670
of discretion, but so far as I am concerned, I will be glad to have the figures.

The Witness: I would rather consult with our counsel during recess.

By Mr. Weisman.

Q. All right. A. And determine what should be done in this particular course.

Q. Well, that is a fair statement. Would you, when you consult with your counsel, likewise consult with him and tell him subject to his advice to you, and if it meets with his conclusions, I would like you, during the recess, to make up a list as to each department that is under your supervision setting forth the total number of manufac- 4671
turers that you do business with in that department, or did business during the thirteen months immediately prior to February, 1936. Will you do that? A. Which department do you have reference to?

Q. All of them. A. All of my departments?

Q. Yes. A. I certainly shall consult with him.

Q. Yes, consult with him and let us know whether or not, after such consultation, you will produce them or not.

Mr. Haycraft: I object to this, Mr. Examiner, to that being done other than Guild departments. The departments which handle Guild merchandise. Irrelevant, immaterial and not proper cross-examination.

Mr. Weisman: All right.

Examiner Bennett: I will overrule the objection, as far as that is concerned, but the discretion is still with him.

Mr. Haycraft: I have no objection to information as to Guild departments.

Mr. Weisman: All right.

4673 That is all, Mr. Chance.

Examiner Bennett: All right.

Redirect examination by Mr. Haycraft.

Q. You were asked, Mr. Chance, as to how it happened that you were familiar with the price lines of two of the manufacturers, C. H. D. Robbins and Baron, and were not familiar with the other Guild manufacturers, familiar with their lines, prices, and so on. I will ask you whether or not you were ever given an opportunity to become familiar with those lines?

Mr. Weisman: Objected to. I object to that. Incompetent, irrelevant, immaterial; not proper redirect examination; calling for a conclusion.

4674 Examiner Bennett: Overruled.

Mr. Weisman: Exception.

Examiner Bennett: You may answer.

A. I was never given an opportunity to become familiar with these particular manufacturers.

By Mr. Haycraft.

Q. And why? A. Because of the red carding of our store with these same resources.

Q. You were asked certain questions yesterday, or the day before, with respect to comparative figures on advertising and window display for five months, 1935 compared with 1936. I will ask you whether or not such figures are gotten up in your department and under your supervision?

Mr. Weisman: Objected to as incompetent, immaterial.

A. No, sir.

Q. Is it part of your duties to know what those figures are? A. I don't quite understand the question. May I have the question? 4676

(Question read.)

A. Yes, we do have figures submitted to us, and it is part of my duty and responsibility to know what our advertising costs are.

Q. As at the time that they are made? A. No, after they are submitted to us as a matter of comparison.

Q. I see. Did you, in 1936, have any knowledge, in February, 1936, as to the budget for the five months under consideration, from February to June, as compared with 1935?

Mr. Weisman: Objected to as immaterial. That has already been answered.

Examiner Bennett: Overruled. 4677

The Witness: May I have that question?

Mr. Haycraft: I asked him if he knew in February, 1936.

The Witness: May I have the question?

(Question read.)

A. I did not at that time; no, sir.

By Mr. Haycraft.

Q. How are those budgets made up?

Mr. Weisman: Objected to as immaterial, incompetent, no proper foundation.

By Mr. Haycraft.

Q. Did you know?

Mr. Weisman: No foundation laid.

A. There is a tentative plan.

4679 Examiner Bennett: I will overrule the objection.

A. There is a tentative plan made.

By Mr. Haycraft.

Q. Plan? A. At the beginning of each period.

Q. What length of period? A. Possibly for three months.

Q. Three months? What time of the year? A. Spring, summer, fall and winter.

Q. Then when was the winter budget made up? A. Which winter are you referring to?

Q. Well, take 1936, for instance. When was that taken into consideration? A. That had been made up prior to my entering or taking over the division.

4680 Q. When was the spring budget made up? A. The spring budgets were made up subsequent to my taking over the division.

Q. What month? A. I don't recall the exact month.

Q. Did you at that time take part in the making up of that budget in the spring of 1936? A. Yes, I submitted an estimate on what the approximate advertising cost would be.

Q. Was there any comparison made at that time with—by you or any of your subordinates with respect to the spring budget for advertising with the same period of time in 1935? A. May I have the question again?

Q. (Question read.) A. No.

Q. Did you see at that time such a comparison? A. I don't remember seeing any comparison.

Q. You testified on cross-examination that the Baron Dress Company had been selling Strawbridge & Clothier since February 1, 1936? A. That is right, sir.

Q. I believe you also testified that you understood that they had resigned from the Guild, but you didn't know when; is that correct? A. I have. 4682

Q. I will ask you whether or not there are any other Guild resources that are now a source of supply for Strawbridge & Clothier?

Mr. Weisman: If he knows

Mr. Haycraft: Yes, if he knows.

A. I cannot mention any particular name, but I know there are some that have resigned.

By Mr. Haycraft.

Q. I will ask you about Lipman Brothers. A. Yes, Lipman Brothers have resigned since the time of the red carding.

Q. Do you have any knowledge as to when they resigned? A. No, I do not. 4683

Q. Do you know how long you have been getting merchandise from Lipman Brothers since the red carding took place? A. Possibly around the early part of March or the latter part of February.

Q. I see. In what departments do you handle Lipman Brothers' merchandise? A. 350 department is one department, and I know it definitely handles Lipman Brothers' merchandise.

Q. Do you know of any other Guild manufacturers that has resigned from the Guild? A. No, I don't recall any to my mind at this time.

Q. You were questioned with respect to the volume of sales in January, February and March, 1936, as to comparative volume. A. That is right, sir.

Q. Of these various departments under your supervision. You said that Easter, you understood, came on April 12 this year, 1936. A. That is right.

Q. Is that correct? How long before Easter are the retail sales affected by the Easter buying on the part of the public?

4685 Mr. Weisman: I object to that as improper redirect. We are going to open all of this up again.

Examiner Bennett: Overruled.

Mr. Weisman: Exception. Further, that the question is incompetent in form. It calls for a conclusion, an opinion, or something or other.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. I would say six to eight weeks prior to Easter, retail business is affected by that particular holiday.

By Mr. Haycraft.

Q. I will ask you to testify whether or not in your opin-
4686 ion the ability or inability of Strawbridge & Clothier to get dresses from members of the Guild would affect the volume of sales in March, 1935, as compared with March, 1936? A. Yes. There is—certainly would make a difference as to the sales results.

Q. On cross-examination you were asked certain questions with respect to Commission's Exhibit No. 414, particularly with reference to the price lines of the lower brackets. I will ask you to testify, if you will, as to which

of the price lines in this exhibit, from your knowledge of the business, would include Guild merchandise, that is manufactured by Guild manufacturers? A. I am safe in saying $16.95 and up.

Q. $16.95? A. Yes, sir. There may be some other prices but I am certain of this and I am not certain of the others and I would rather not state them.

Q. On cross-examination you were asked concerning—you were asked certain questions with respect to the price range of garments sold by Strawbridge & Clothier of ladies' dresses other than those described in these various exhibits, 414, 412, and so forth, and in your answer you made mention of cotton dresses. I will ask you whether 4688
or not the Guild manufacturers, any of them, ever manufactured cotton dresses to your knowledge? A. I have no knowledge on that, sir.

Q. No knowledge? A. Yes, sir. I have no knowledge.

Q. I will ask you this question: Whether or not the dress departments over which you now have supervision have had dresses since February, 1936—— A. I am sorry. I do not get that question.

Q. I will ask you this question: Whether or not the dress departments over which you now have had supervision since February, 1936, handle cotton dresses? A. Yes, sir. We do.

Q. In what price ranges would that be? A. $1.95 retail inclusive up to $10.75 retail.

Q. I will ask you whether or not to your knowledge any 4689
cotton dresses are sold by Department No. 371? A. Yes, sir. Department No. 371 does sell cotton dresses.

Q. In what price ranges? A. We buy from the $3.95 price range and possibly to $5.95 and a few at $7.95.

Q. Is that the retail price? A. Retail price. Yes, sir.

Q. What were your instructions to the statistical department in the preparing of Commission's Exhibit No. 410?

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant and not the best evidence. The best evidence is the written document. He has already testified fully on this. Your Honor remembers on cross-examination that he testified what his instructions were and how they were gotten up.

Mr. Haycraft: He was not allowed to fully.

Mr. Weisman: I submit that this is not proper redirect examination. I have refrained from objecting, feeling that it would simply lose time, but now I must object to this type of redirect examination.

Examiner Bennett: I think it is not the best
4691 evidence in view of the testimony of the witness that he had something in writing. Unless you desire to produce it, I think this had better go out.

By Mr. Haycraft.

Q. Do you have those instructions with you? A. No, sir. I do not have them.

Q. To whom were they given? A. They were placed in the mail and addressed to Mrs. Knipe of our Accounts Payable Department.

Q. In the noon recess I should be glad to have you get a copy of those instructions, if possible to do so, and present them at the afternoon session. A. Yes, sir.

Mr. Weisman: Will your Honor advise this wit-
4692 ness that he can use his own discretion and consult with counsel regarding the production of this paper as your Honor did with regard to the production of the papers that I have asked for?

Examiner Bennett: He has his instructions. They apply to all counsel.

The Witness: It is understood.

By Mr. Haycraft.

Q. On cross-examination you made an estimation of the volume of sales in Department No. 331 for the year 1935, I believe.

Mr. Weisman: I object to that—if you have finished your question—I do not want to interrupt you.

Mr. Haycraft: No. I have not finished my question.

Mr. Weisman: Excuse me.

By Mr. Haycraft.

4694

Q. I will ask you whether or not the records of Strawbridge & Clothier will disclose that information?

Mr. Weisman: I object to the form of the question. As a matter of fact that was one of the things that the witness did not testify to and that I sought to elicit from him.

Mr. Haycraft: You are wrong on that. He made an estimate or gave an opinion of the approximate volume of sales for Department 331.

Mr. Weisman: For the year 1936 and not for 1935. He said $100,000 and I produced a script showing it was $170,000 and——

Mr. Haycraft (interposing): There is no use of arguing this. I know what the witness said and I 4695
am willing to pit my memory against his any time.

Examiner Bennett: I overrule the objection. You may answer.

The Witness: May I have the question again, please?

(The reporter read the question as follows: "Q. On cross-examination you made an estimation of the volume of sales in Department No. 331 for the

year 1935, I believe. I will ask you whether or not the records of Strawbridge & Clothier will disclose that information?"

A. The records of Strawbridge & Clothier will disclose the volume of sales done, I believe, in any department of that store.

Mr. Haycraft: I should be glad to have you consult your attorney, and, if he has no objection under the circumstances to producing it, produce it at the afternoon session in the form of a statement showing the total volume of sales done by that de-
4697 partment for the year 1935.

The Witness: I shall be glad to do so, Judge.

By Mr. Haycraft.

Q. I will ask you to testify as to the character of the merchandise that Strawbridge & Clothier bought from Guild manufacturers from season to season. A. I cannot attest the character of merchandise prior to my taking over the division. But since February 1, 1936, there is a high calibre type of merchandise in several departments that were remains of the original shipments. One particular item that I remember particularly was costume suits. Costume suits were an item that was desirable at the time and were being manufactured by concerns that were Guild
4698 members that we had difficulty in replacing.

Mr. Weisman: Now I ask that the answer be stricken out as not responsive, if your Honor please.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. The garments which you referred to were sold in what period of time? A. At that particular time it was considered a spring item.

Q. Spring item? A. Yes.

Q. Following the spring season of the year, is there a different type of garment——

Mr. Weisman (interposing): I object.

By Mr. Haycraft.

Q. —or the same type of garment——

Mr. Weisman: As not proper redirect examination.

By Mr. Haycraft.

Q. —as sold in the summer time? A. There is a different type of garment sold later in the year than what I had reference to as a costume suit. 4700

Q. I will ask you whether or not the dresses sold by your department in the summer time, in June, in the month of June, particularly, were of such a type or character or the same type or character that were handled during the earlier months of the year?

Mr. Weisman: Objected to as incompetent and immaterial, not proper redirect examination.

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

A. There is quite a lot of cheaper merchandise brought in, wash dresses and cotton dresses in the summer months in those departments. 4701

By Mr. Haycraft.

Q. Would that have any effect upon your volume of sales during the summer months? A. Well, you have a larger market for those particular things. I think it would, yes.

Q. Directing your attention to Commission's Exhibit No. 415, would the explanation you have given account in any way for the apparent increase in the volume of sales in the departments which had been buying from the Guild? A. I am sorry. I do not quite understand that question. May I have that question again, please?

Q. (Question read.) Can you answer that now? A. That, I believe, is the explanation.

Q. Now, then, I will ask you whether or not—strike that out. When do you enter the market to buy garments for fall and winter trade?

Mr. Weisman: I object as incompetent, immate-
4703 rial and irrelevant, and not proper redirect examination.

Mr. Haycraft: This is on the question of the subsiding of the difficulty in buying garments.

Examiner Bennett: I will overrule the objection.

Mr. Weisman: Exception.

A. Our buyers have been in the market for the past few weeks buying fall merchandise.

Mr. Weisman: I ask that the answer be stricken out as irresponsive. He asked him when he bought his garments and the answer is something about buyers going out.

Mr. Haycraft: You are entirely mistaken about
4704 that. I ask that the question and answer be read, and I am sure you will see it.

Examiner Bennett: The question and answer may be read.

(Question and answer read.)

Mr. Weisman: I withdraw the objection.

Examiner Bennett: The objection is overruled anyhow.

By Mr. Haycraft.

Q. I will ask you if the difficulty to which you testified on direct examination, and to which you were, or about which you were cross-examined in connection with Commission's Exhibit No. 415, is still apparent in your attempts to buy fall merchandise? A. The buyers so report; yes, sir.

Examiner Bennett: You may examine.

Recross-examination by Mr. Weisman.

Q. Let me ask you a few questions. A. Yes.

Q. Were you—just sit back in your chair. Do not sit 4706
on the edge there. A. Oh, very well.

Q. Take it easy, you are not going to lose anything by it. A. Very well. I have sat back now.

Q. When did the order—in the year 1935—first, let me ask you about this: When did Easter come in the year 1935? A. I believe one week later than it occurred in 1936.

Q. When did it take place in 1936? A. April 12.

Q. When was it in 1935? A. Offhand, I should say April 19.

Q. No, I will tell you it was April 21. A. You may be right.

Q. Now that I have mentioned the date, April 21, does that refresh your recollection? A. Well, I assume it is 4707
correct.

Q. I assure you it is. A. Thank you.

Q. We looked it up. A. Very well.

Q. You stated on your redirect examination that the advent of Easter would tend to accelerate sales or increase the volume of sales during the period from eight to ten weeks before; did you?

Mr. Haycraft: I object. He did not make any statement to that effect.

By Mr. Weisman.

Q. Now just be calm. Did you say it had no effect on sales? A. I did say that it had an effect upon sales, but not for the period of time that you mentioned.

Q. What period of time did you mention? A. I said six to eight weeks.

Q. You said six to eight weeks? A. Yes.

Q. Not eight to ten weeks? A. No, sir.

Q. Now, say this—so, then, what were the six to eight weeks prior to April 12? A. That would be practically, or approximately two months prior to that time.

Q. That would be February 12, would it not? A. Yes,
4709 sir.

Q. Isn't that so? A. That is right.

Q. Now, what is six weeks prior to April 21? A. Would that be February 19 or 21?

Q. February 19 or February 21 would be eight weeks. And what would be six weeks? A. Two weeks subsequent to that.

Q. Now, don't you know— A. The first of March.

Q. —that Commission's Exhibit 415 shows that in March, 1936, you did in your Guild departments $10,000 more business than you did in March, 1935? Didn't you know that when you answered Mr. Haycraft? A. That wouldn't make any difference in my answer whether I knew that or not. I stated the facts to Mr. Haycraft.

4710 Q. Well, now, that you stated the facts and the facts are that in March, 1935, you did $75,700, while in March, 1936, you did $85,800, in those Guild departments; doesn't that affect your answer? A. I don't believe it does.

Q. In other words, you still stand by that answer? A. Well, Mr. Haycraft——

Q. No, no. Do you still stand by the answer now that I have called your attention to these facts? A. Well, that wouldn't make me change my mind.

Q. That is what I want to know. You still stand by your answer? A. I certainly do.

Q. O.K. You stated to Mr. Haycraft—by the way, when did you become buyer—or, I will withdraw that. When did you become divisional merchandise manager? A. Officially, February 1, 1936.

Q. Now, listen to my question again. When did you commence to exercise the functions of divisional merchandise manager? A. February 1, 1936.

Q. You reiterated on four occasions when I asked you that question the words you officially became divisional merchandise manager on a certain day. What was the significance of your answer using the word "officially"? 4712

Mr. Haycraft: Objected to as irrelevant and immaterial; not proper recross-examination.

Examiner Bennett: Overruled.

A. It is a term applied, I believe, to a change of position to which I have taken.

By Mr. Weisman.

Q. Well, before February 1, 1936, were you generally acting with Mr. Taylor as unofficial assistant to him? A. No, sir. I was buyer for 492 and 493 departments.

Q. And solely and absolutely— A. That is right.

Q. And that is all that you did? A. That is right.

Q. And you didn't know anything about what was going on in these other departments? A. I may have known as much as any other person by contact with other buyers and seeing what is going on, but aside from—— 4713

Q. Well, that is what I want to find out. A. Aside from getting——

Q. How much did you see?

Mr. Haycraft: Let him complete his answer.

Mr. Weisman: Excuse me. Excuse me.

A. Aside from going into any technical details to determine any particular thing, I have never made that my business. Mr. Taylor was my superior, and I respected him as such, and I confined my activities to my own job.

By Mr. Weisman.

Q. You made quite a discussion yesterday of the necessity for your getting Lipman Brothers' merchandise, didn't you? A. Yes, sir.

Q. And you stated that you couldn't get it, didn't you? A. We could not get those numbers on reorders at the time we were red carded, yes.

4715 Q. You shortly thereafter got them, didn't you? A. There was a period there that we were without any receipts of merchandise from Lipman Brothers.

Q. How long? A. I do not know exactly how long.

Q. No, but how long without being exact? A. I would say approximately a month.

Q. Wasn't it approximately eleven days? A. I don't know whether that was or not.

Q. Why do you say a month if you don't know? A. You asked me about eleven days.

Q. As a matter of fact, within eleven days after you were red carded didn't Lipman resume relations with you and resign from the Guild? A. He may have resigned from the Guild at that time, but whether he resumed relations with Strawbridge & Clothier at that particular
4716 time I am not certain and I do not know.

Q. Didn't you on your direct examination seek to give the opinion—I withdraw the word "opinion"—seek to give the inference that you were unable at all times thereafter to get the goods from Lipman Brothers? A. No, I don't believe there was a statement to the effect that we did receive some after we were red carded, but I state that there was a lapse of time between the original shipments and the time we were red carded, and some time after that. How long I do not know.

Q. In other words, you now state that on your direct examination you stated that you were getting goods from Lipman Brothers? A. Since we have been red carded we have received merchandise from Lipman Brothers.

Q. No. I want to know whether or not you so stated on your direct examination? A. Well, I don't quite understand the way you frame your words. If you will please read them back to me I will tell you.

(Record read.)

A. I believe I have.

Q. That is your best recollection of your testimony? A. Yes. 4718

Examiner Bennett: Have you arrived at some point where we can stop?

Mr. Weisman: I think it is well to have a recess for lunch.

Examiner Bennett: All right. We wil recess for lunch and we will come back at 2 o'clock.

(Whereupon, at 12.35 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION, 2 P. M.

Examiner Bennett: Be in order, please. 4719

By Mr. Weisman.

Q. What is a costume suit? A. A costume suit is a skirt and a jacket and a waist. Sometimes that waist may be attached to the skirt and at other times it may not. It may be a dress and a coat. Generally termed in a way as a fur-trimmed costume suit, could be plain or tailored.

Q. Now, these costume suits, who are they generally made by, what branch of the industry? A. I don't quite understand you, by branches.

Q. Did you ever hear of various branches of the needle industry? A. You mean in the way of coats and suits?

Q. That is right. A. And dresses? Yes.

Q. That is right. A. Yes.

Q. Now, you know there is a well-defined distinction between the dress houses and the coat and suit houses, don't you? A. There is.

Q. These costume suits that you refer to, who were they generally made by? A. I recall in discussing——

4721 Q. No, no, no, I didn't ask you what you recall in discussing. I asked you as to those two branches of the industry, by which branch were those costume suits generally made by? A. They are made by both branches, the dress and suits.

Q. Do you say that they were made equally by the dress houses as they were by the coat and suit houses? A. I have no opinion on that.

Q. Don't you know that the costume suit was a promotion of the coat and suit people as distinguished from the dress people? A. You are telling me it is.

Q. Well, don't you know it? A. I said I had no opinion to that.

Q. Did you ever have an opinion on it? A. Not on that one thing, no.

4722 Q. That is what I want to find out. Now, you referred to these costume suits in the early part of this year, in January and February, and even in December. There was a great vogue, wasn't there, for these costume suits? A. I understand there was.

Q. Didn't the coat and suit manufacturers generally go into the manufacture of these costume suits to satisfy this vogue o' demand? A. I stated before——

Q. No, no. A. I do not know.

Q. What? A. I stated I do not know.

Q. Do you still not know? A. I do not know whether coat and suit manufacturers go in on that vogue.

Q. Do you know who made them? A. I have memorandums. I do not know who made them.

Q. Well, let's see. You were very much perturbed, weren't you, over your difficulty in getting merchandise for the departments under your divisional merchandise managership? Were you or were you not disturbed? A. Yes, we were.

Q. Well, as a result of that disturbance, from which you suffered so grievously, didn't you seek to ascertain who was making these costume suits generally? A. The buyers 4724
have attempted——

Q. No. No. Did you? A. I personally did not, although I did through my buyers.

Q. In other words, you just continued to suffer; is that so?

Mr. Hayeraft: Objected to.

Examiner Bennett: You don't expect him to answer that question, do you?

Mr. Weisman: I do. I want to know.

Examiner Bennett: Well, I will sustain the objection.

Mr. Weisman: Exception.

By Mr. Weisman. 4725

Q. Do you know how many members of the industry are generally engaged in the cloak and suit business? A. I do not.

Q. Have you any idea at all? A. None.

Q. Not the slightest? A. No.

By Mr. Weisman.

Q. Do you know how many members of the Fashion Originators Guild of America are in the cloak and suit business? A. I do not.

Q. Did you ever seek to investigate? A. I did not.

Q. In the course of this great difficulty that you had that you have testified that you had, I mean, did you deem it incumbent upon you to see whether or not you could get a good costume suit from one of the members of the industry that wasn't a member of the Guild?

Mr. Haycraft: That is objected to on the same ground, that it has been gone over yesterday. It is not proper recross-examination.

Examiner Bennett: Well, I will let him answer. Overruled.

4727 A. We have attempted to, and we did get some.

By Mr. Weisman.

Q. You did get some? A. Yes.

Q. With regard to this costume suit that you told us about on your redirect, who made that costume suit? A. I said costume suits in general terms.

Q. Oh. A. Mentioning as an item.

Q. Well, all right. Who made those costume suits which you referred to in general terms? A. If my recollections are correct, according to the buyers of that particular department, I have two manufacturers, I am pretty certain were mentioned to me as makers of costume suits at that time.

4728 Q. No. That isn't what I asked you. Makers of costume suits, I can give you 698 others. I mean— A. I mean those that we bought from.

Q. I want to know—you testified that you had a certain costume suit that was in great vogue. A. I didn't say a certain costume suit. I beg your pardon.

Q. Didn't you testify on your redirect that after you ascended to the position of divisional merchandise manager, you learned that there was in stock, that had been

carried over from the period before, a particular costume suit? A. No, I meant generally. I think that is my testimony.

Q. You meant that generally in the stock there were some costume suits? A. That were being used from the Guild houses at the time, yes.

Q. What were the Guild houses that had made those costume suits? A. Max Heit is one, and Goldstein-Entin is another at that particular time. There may have been others. That is all I recall to my mind.

Q. Didn't you subsequently fill in your stock with other costume suits? A. We bought some but we had great difficulty getting them, and it was necessary for us to go 4730
to Chicago in order to replace those costume suits that we ordinarily would buy in New York.

Q. Didn't you buy costume suits in the New York market? A. There may have been some bought but I do not remember. The buyer is better able to testify to that.

Q. How many of these costume suits had you bought from Max Heit? A. I don't remember figures. I am not the person who buys them. The buyer——

Q. What is the wholesale price of the costume suits that you refer to? A. My testimony will refer to that particular suit coming in the stock prior to my taking over the division. I do not recall.

Q. In other words, I have it that you do not remember the price of this costume suit? A. I wouldn't know.

Q. What was the style of the costume suit? A. I 4731
wouldn't recall.

Q. Well, you just stated that you had great trouble in replacing another costume suit. Didn't you know the price of the suit that you wished to replace? A. I don't know it at the time, to-day. I do not recall.

Q. You have since forgotten? A. Yes.

Q. And you have even since forgotten the type of it? A. I have mentioned types that were stocked, fur-trimmed costume suits.

Q. I see. Now, on your redirect by Mr. Haycraft you were asked about your buyers going into the market. Now, isn't it a fact that your buyers regularly go into the market all through the year? A. I don't recall any particular incident in the redirect or that Mr. Haycraft asked me that question.

Q. All right, if you don't, that is too bad. But you have your buyers? A. That is right.

Q. Now, what is the duty of these buyers with regard to the New York market? A. It is their duty to buy and resell merchandise for profit.

Q. How frequently do they go into the New York mar-
4733 ket? A. I would say on the average of once a week.

Q. You would say on an average of once a week? A. Yes, I would.

Q. So you would say that from February 1 down to the present time your buyers for your various departments have visited the New York market once a week? A. Yes.

Q. They visited that market for the purpose of making purchases and to place commitments and seeing what is going on? A. Yes.

Q. The trend of style? A. Yes.

Q. What is now? A. Yes.

Q. What is seasonable? A. Yes.

Q. To ascertain the things that are merchantable? A. Yes, sir.

4734 Q. You also stated that on their last most recent trip for fall merchandise they reported to you that they had difficulty? A. That is correct.

Q. When you said that they reported to you that they had difficulty, do you mean that they reported that they had difficulty in getting merchandise from Guild houses? A. No, in an endeavor to replace those particular types. They said difficulty in an endeavor to replace those particular types.

Q. Well, do you want it understood, then, that your store, Strawbridge & Clothier, has, up to the present time in the departments under your supervision, been able to replace merchandise therein of the same type as they therefore bought from members of the Fashion Originators Guild? A. I said——

Q. No, no. Is that your answer? A. No, it is not.

Q. Then they have not had. They have succeeded in replacing it; is that so? A. Your statement that you mentioned to us that that was complete——

Q. No, I did not ask you that.

By Examiner Bennett. 4736

Q. Can you answer that question? A. Your statement that you mentioned to us that we have been completely unable to replace that merchandise is not what I wish in the record. I wish to state that we are partially, or in some part, not able to replace that particular merchandise.

By Mr. Weisman.

Q. Well, generally, have you been able to replace it?

Mr. Haycraft: Well, I object as too indefinite to have any probative value, an answer of that sort to a question of that type.

Examiner Bennett: I will let him answer. 4737

A. I cannot answer anything further than I have on that, Judge. That is the same thing.

Examiner Bennett: All right. That is your answer.

By Mr. Weisman.

Q. Well, let us see whether or not that is your best answer. Do you consider that Strawbridge & Clothier, in

the Department No. 331, during the month of June, had a good, complete, seasonable stock of merchandise on hand?

Mr. Haycraft: I object.

Examiner Bennett: I will let him answer.

A. Our stock in that particular department, in measure, I would say, was seasonable.

By Mr. Weisman.

Q. Would you say that you had a sufficient amount of it on hand to satisfy the consumer demand? A. Are you
4739 talking about seasonable or type?

Mr. Weisman: I ask that the question be read so that the witness may be able to answer it.

(Question read.)

A. If you insert the word "seasonable" there, I can answer you better and clearer.

Q. I want you to answer it the way that I have propounded it. A. Not as I—we have had sufficiently seasonable merchandise to take care of our demands of certain types, those types that we have on hand in our stock.

Q. Well, let us see. A. Yes.

Q. You have a department known as Department 331? A. Yes.

4740 Q. Is that so? A. That is correct.

Q. What is Department No. 331, Mr. Chance, if you please? A. 331 is known as the Women's Better Dress Department.

Q. In the Women's Better Dress Department in the month of June, 1936, did you have a sufficient stock of seasonable, stylish merchandise to adequately supply the consumer demand that was made upon that department?

The Witness: May I have that question again, please?

(Question read.)

The Witness: I am sorry. May I have the question again, please?

Mr. Weisman: Give it to him again. Give it to him as many times as he wants it.

(Question again read.)

A. The amount of stock we had was, I believe, seasonable. To satisfy the consumer demand is problematical.

By Mr. Weisman.

4742

Q. What is that based upon? What is your opinion based on in that regard? A. I have no opinion.

Q. What is your best opinion on that; surely, you have some opinion. A. I have no opinion whatever.

Q. Do you mean to tell us you have no opinion whatever? A. No.

Q. You, as head of this department, would tell us whether you had enough stock on hand to satisfy the consumer demand? A. I made——

Q. No, no, no, no. Give us an answer to my question, please. I will make it the question I want you to answer now. A. No.

Q. No? A. That is what I said.

Q. What do you mean by "no"? You did not or you did? A. Because we lacked certain types of merchandise that we purchased from Guild houses. 4743

Q. Would you say that the same was true of Department No. 350? A. I would.

Q. You would? A. Unquestionably.

Q. That is certainly a very direct statement for you to make. A. Oh, yes?

Q. In other words, you now state— A. What?

Q. When you say "certain types of merchandise," what do you mean by that? A. I mean this, that we have had a following on certain type merchandise.

Q. Certain types does not convey anything to us. Explain, if you please? A. Well, I cannot be specific. I am telling you just what it is, it is "certain types."

Q. What are certain types? A. Certain types may mean a daytime dress or an evening dress or an evening wrap that Guild manufacturers make.

Q. Do not other people make daytime dresses or evening dresses and other type dresses of certain types also? A. Yes, they do.

4745 Q. Wherein did the Guild type dress differ from the non-Guild type dress? A. It differed, as I have explained prior to this, in the construction of the garment, the styling, and many other features.

Q. What do you mean by the "styling"?

Mr. Haycraft: The witness has already gone into this in great detail. It seems to me that this is a useless repetition.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. And I offer to show that the witness does not have the remotest idea about what he is talking about.

Examiner Bennett: You have your exception. Proceed.

4746 *By Mr. Weisman.*

Q. Do you know the volume of the costume suits that were bought in the Chicago market? A. I do not recollect.

Q. Do you know the volume of the costume suits that were bought in the New York market? A. No. I do not have any idea.

Q. Do you know the dollar value of the costume suits that were bought in the Chicago market? A. No. I do not.

Q. Do you know the dollar value of the costume suits that were bought in the New York market? A. Have no idea.

Q. Have you any idea of the ratio between the two as to volume? A. No.

Q. Have you any idea of the ratio between the two as to value? A. No.

Q. Dollar? A. No.

Q. Did you ever have any knowledge thereof? A. Not to my knowledge.

Q. Did I understand you to say on redirect examination that the Guild houses did not make cotton dresses?

Mr. Haycraft: I object. That has all been gone over. 4748

Examiner Bennett: You may answer the question.

A. Not that I recall. I said certain prices.

By Mr. Weisman.

Q. Do you not know that the Guild houses do engage in the manufacture of cotton dresses? A. As far as fabric is concerned, I know that they can use cotton fabric as well as any other fabric just as well, I suppose, if they decide to do so.

Q. Do you not know that they do it; not that they can do it; they can do a lot of things—but that they do do it, have done it in the past, are doing it now, and probably will do so in the future? A. Not to my knowledge. 4749

Q. Do you mean to deny now that the Guild houses make cotton dresses?

Mr. Haycraft: I object to that.

Mr. Weisman: You brought it out on redirect examination.

Mr. Haycraft: It is incompetent, immaterial and irrelevant, and not proper recross-examination.

What is the use of going all over this. He says he does not know, Mr. Examiner. What is the use of keeping rehashing this all the time. He just keeps reiterating the thing time and time again. In the first place, he has not been able to get into the Guild houses. How can he testify to that?

Mr. Weisman: May the reporter show on the record, and may the record be plain, that Mr. Haycraft is shouting to such a degree that my ear drums are ringing? Furthermore, Mr. Haycraft is
4751 very successfully, no doubt, prompting the witness as to what his answer should be in that regard. I think that that is quite improper and ask your Honor to instruct him not to do so.

Examiner Bennett: Proceed.

By Mr. Weisman.

Q. You know that the Guild houses do make cotton dresses? A. No.

Q. You do not know that they make cotton dresses? A. I do not.

Q. You would not seek to deny it, would you? A. How can I know what they are doing when I cannot even get into their houses?

4752 Q. Will you deny it?

Mr. Haycraft: I object.

Examiner Bennett: Just a moment. I will sustain the objection to that. This has become just argumentative.

By Mr. Weisman.

Q. Do you remember on your redirect examination that Mr. Haycraft showed you this exhibit? A. Yes, sir; he did.

Q. Do you remember whether or not he asked you in connection with that exhibit what price ranges shown thereon are members of the Guild price ranges? A. I remember something pertaining to that.

Q. What do you remember pertaining to that? It was only shortly before our adjournment. What do you remember prior to the adjournment as to what was said about that? What do you remember pertaining to that? A. I remember telling him that the price line of $16.95 and up included purchases from different Guild houses.

Q. Do you not know that the Guild houses extend the way down to $4.75 price lines? A. I made that statement.

4754

Mr. Haycraft: That is objected to as not proper recross-examination.

Examiner Bennett: I will permit it.

A. I said there may be prices lower than that, but I would rather confine my statement as a fact to $16.75 and up.

By Mr. Weisman.

Q. $16.75, you have changed that again. In other words, it is a purport of your statement, or would the purport of your statement be that you know that the $16.75 or—really, you said before $16.95 is the Guild price range, but as to what your price ranges below that are you are not certain; is that so? A. That is right. 4755

Mr. Haycraft: I will recall Mr. Tily.

4756 *Herbert J. Tily—For Commission—Recalled—Redirect.*

HERBERT J. TILY, was thereupon recalled as a witness for the Commission, and having been previously sworn, testified further as follows:

Mr. Haycraft: I want to state that Mr. Tily is being recalled for one question.

Direct examination by Mr. Haycraft.

Q. Will you testify—you are the same Mr. Tily that testified here heretofore in this proceeding?

Mr. Weisman: We all recognize him.

4757 *By Mr. Haycraft.*

Q. I would like at this time to have you testify to the ratio of increase or decrease in the volume of sales sustained by the Strawbridge & Clothier Store for its entire store business for the months of February, March, April, May and June compared 1935 as against 1936?

Mr. Weisman: I object as incompetent, immaterial and irrelevant, and not proper redirect examination, and I submit, if your Honor please, if we are going to open up this case again I think I have a whole lot of questions that I want to ask Mr. Tily.

Examiner Bennett: This is not redirect examination. I do not understand that this is redirect

4758 examination.

Mr. Weisman: Then I respectfully ask that if this practice is to be indulged in I should be permitted to ask Mr. Tily a large number of questions that I now have to ask him.

Examiner Bennett: None, except on this question.

Mr. Weisman: No, no. I think if your Honor is going to let this gentleman call his witnesses and

take them off and put them back, I respectfully submit the respondents should have the same right to go back to a lot of questions that he forgot to ask, and there are plenty of them that I would like to ask Mr. Tily at this time.

Examiner Bennett: Well, we will settle that now. There won't be any questions outside of this original redirect examination.

Mr. Weisman: I respectfully except and state that this——

Examiner Bennett: All right. Let's go ahead.

Mr. Weisman: Now, aside from that I object to this as incompetent, immaterial and irrelevant. 4760

Examiner Bennett: That is perfectly all right.

Mr. Weisman: In this case.

Examiner Bennett: Your objection is——

Mr. Weisman: Yes.

Examiner Bennett: I am going to let him answer that question.

Mr. Weisman: Exception.

A. The month of February we gained 9 per cent, the month of March 13.3, and the month of April 4.7, and the month of May 15.1, and in June approximately 10 was my first statement to you. It is wrong in the record. It was misunderstood, I think, by the reporter. I said approximately 10 or 9.9 and a fraction, and it is in there as 10. Evidently he misunderstood the significance of it. 4761

Q. This is 1936 as compared to 1935? A. 1936 as compared to 1935.

Mr. Haycraft: That is all.

Mr. Weisman: What were those figures?

(The answer was read.)

Mr. Weisman: Are you finished?

Mr. Haycraft: Yes.

Mr. Weisman: I now move to strike this testimony out as incompetent, immaterial, irrelevant and not proper redirect, having no bearing on the issues in this case.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

Examiner Bennett: He was called for redirect examination, as I understand it.

Recross-examination by Mr. Weisman.

Q. Mr. Tily, I understood you to testify that you relied on your subordinates to furnish you with the information
4763 concerning which you testified.

Mr. Haycraft: Objected to as not proper cross-examination, no such a statement was made.

Examiner Bennett: I will sustain the objection unless you apply it to this particular thing.

Mr. Weisman: Exception.

Examiner Bennett: All right.

By Mr. Weisman.

Q. Do you know this that you have testified to of your own knowledge? A. I know that the figures are recorded in the due course of business and these records are taken from the figures.

4764 Q. Somebody handed you the figures; is that so? A. In this particular case I copied them myself.

Q. Where did you copy them from? A. From our official records.

Q. And then you came here and read them into the record? A. Correct.

Q. You rely on your subordinates, I understand? A. (Witness nods head affirmatively.)

Mr. Haycraft: I object.

Mr. Weisman: Exception.

Examiner Bennett: Well, I will sustain it unless you apply it to this particular thing.

By Mr. Weisman.

Q. In connection with your direct testimony in this—no, wait a minute before that.

Mr. Weisman: May it please your Honor, it now develops that there were certain questions which I had neglected to ask Mr. Tily through my own inadvertence. Now, since the Commission has received the courtesy of being permitted to put back the witness on the stand after it had stated that it was finished with him, I ask that the respondent 4766
in this case be accorded the same courtesy, and that I be permitted to reopen my cross-examination of this witness.

Mr. Haycraft: I object to it.

Examiner Bennett: I sustain an objection to it. I denied the request.

Mr. Weisman: Exception. I respectfully object to the Court's ruling.

Examiner Bennett: All right. You will have an exception. Don't make a speech for the record.

Mr. Weisman: No, I have something to go still further. I respectfully ask the Court to strike out all of this witness' testimony. I decline to cross-examine him further in view of the evident fact that 4767
the Commission may do in this case and I may not, to wit, because of an inadvertence by recalling a witness I may not, when the witness is recalled and on the stand, ask him the questions that I now have before me to ask him.

Examiner Bennett: All right.

Mr. Haycraft: That is all, Mr. Tily.

(Witness excused.)

Mr. Haycraft: Is Mr. March present?

KENNETH MARCH was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Examiner Bennett: What is the first name?

The Witness: Kenneth.

Direct examination by Mr. Haycraft.

Q. Where do you live, Mr. March? A. 142 Rumford Road, Philadelphia.

Q. What is your occupation? A. I buy dresses for Strawbridge & Clothier.

4769 Q. What department? A. Departments 338 and 358.

Q. What price range are those dresses, retail price first? A. Retail? From $10.75 to $16.75.

Q. How long have you been in that position? A. Since February 1, 1936.

Q. Before that what did you do? A. From July, 1933, until the end of January, 1936, I purchased dresses for the Economy Dress Shop, that is Department 491.

Examiner Bennett: We will have a recess of ten minutes.

(Whereupon a short recess was taken.)

Examiner Bennett: All right, you may proceed.

By Mr. Haycraft.

4770 Q. How long were you in that position? A. From July, 1933, until the end of January, 1936.

Q. Now, as buyer for Department 491, what were your duties? A. My duties were the selection of dresses for sale in Strawbridge & Clothier Company, Economy Dress Shop.

Q. Where did you make the selections? A. In New York City.

Q. Is that the only market that you attended? A. That is the only market I attended.

Q. How often would you go to New York City customarily for the purpose— A. Once—I beg your pardon?

Q. For the purpose of making selection. A. Once every week.

Q. Now, among the sources of supply were any of the manufacturers members of the Fashion Originators Guild of America, Inc., during the time that you were buying for that department; that is, those that you contacted? A. Yes, one manufacturer.

Q. Which one was that? A. Renclair Dress.

Q. How do you spell that? A. R-e-n-c-l-a-i-r. 4772

Q. What type of dress did they manufacture? A. They manufactured a $4.75 cost dress.

Q. How long were they members of the Guild, to your knowledge? A. A very short time.

Q. And what time? A. I don't recall.

Q. Was it 1935, 1934 or 1933? A. I believe it was 1935.

Q. Can you name some of the principal sources of supply, resources, I believe they are termed in the industry, of Department 491 while you were its buyer?

Mr. Weisman: Objected as to the form of the question as being incompetent, immaterial and irrelevant and framed in a fashion which is not correct in fact, and calling for a conclusion of the witness. 4773

Examiner Bennett: Read the question.

(The question was read.)

Examiner Bennett: Overruled.

Mr. Weisman: Exception.

Examiner Bennett: You may answer.

A. In the misses' end, Trussell.

Q. Will you indicate in making your replies the wholesale price range? A. These manufacturers that I will name are all $4.75 cost manufacturers.

Q. All right. A. Trussell Dress, Joe Mack, Fineberg & Weisend, Cohn & Klausner. In the women's division, Walter Mayer, Emporium. Those were the chief resources.

Q. During that period of time did you do anything about, or did you ever hear of the Fashion Originators Guild of America, Inc.?

Mr. Weisman: During what time?

Mr. Haycraft: At the time that we have talked about here from the last question.

Examiner Bennett: He has testified.

4775 *By Mr. Haycraft.*

Q. Any time that you were buyer for Department 491. A. Yes, I have.

Q. How did you learn of the Guild? A. My department was shopped by the Guild's representative in Philadelphia for copies.

Q. Who was that representative? A. Miss Joyce.

Q. When did she begin to shop your department? A. I am not sure of the exact date.

Q. Will you give the approximate date? A. I should say that it was in the latter part of 1935.

Q. What was her procedure in shopping your department? A. She used to come in the department with a—with various sketches of Guild dresses and would ask me

4776 if I had any of—any copies of these dresses in my stock. Those that I recognized, I told her, and if I didn't recognice the cuts, she went through my stock herself to see if she could find them.

Q. In the event that she found what she believed to be copies of the cuts that she had in her hand, what would she then do? A. She would ask me to return the merchandise to the source of supply.

Q. Did you do so? A. I did.

Q. Did you do that on more than one occasion? A. I did.

Q. Can you testify as to the number or the approximate number of returns that you made of garments pursuant to the request of Miss Joyce? A. I don't know the approximate number.

Q. Do you know the name of the manufacturers to whom you made such returns? A. I don't know those—those records can be obtained.

Q. I will ask you to make a search and be in a position to testify as to the number of returns during the year 1935, giving the approximate date and the name of the manufacturers to whom the garments were returned and the 4778
number of manufacturers, the number of garments returned to each manufacturer. A. Yes, sir.

Q. During the month of January, 1936, do you recall an incident wherein Miss Joyce requested the name of a manufacturer of a garment in your stock? A. I do.

Q. Will you relate the circumstances under which that request was made? A. I believe I had a dress in my stock that Miss Joyce said was a copy of a Guild dress. It was not manufactured by the manufacturer that was specified on her sketch, and she asked me the name of the manufacturer whom I bought the dress from, and I refused to divulge that information.

Q. Will you give the approximate date that that took place? A. It was around the 15th of January, 1936.

Q. Did you relate that incident to your superiors? A. 4779
I did.

Q. Did they require you to furnish her with the information that was requested? A. They did not.

Q. Do you know what she did about it? A. I don't know.

Q. How long after that before you were red carded? A. I don't know exactly. It was some time the early part of February.

Q. Now, at the time that Strawbridge & Clothier was red carded in February—strike that out. What were you doing at the time that Strawbridge & Clothier were red carded by the Fashion Originators Guild, that is, what were your duties then? A. I had been transferred from 491 to Departments 338 and 358.

Q. Now, in Departments 338 and 358 what is the wholesale cost of the garments sold in those departments, or what range of cost? A. Usually from $6.75—that is wholesale?

Q. Yes. A. From $6.75 to $10.75 wholesale.

Q. Are you in a position to testify, or can you testify
4781 as to the percentage of garments, the volume of dresses that you had in that department at the time that you became buyer for it that were of the $10.75 as compared with the $6.75? A. No, I can't.

Q. Can you testify as to the sources of supply, the manufacturers, from whom you purchased dresses at the time you became buyer of that department? A. The only record I had as to whom it was purchased from was the orders that my predecessor had left.

Mr. Weisman: I ask that the answer be stricken out. He was asked as to what he bought. I assume that is why you overruled the objection, Judge. He hasn't answered that at all.

The Examiner: Read the question

4782 (The question was read again.)

Examiner Bennett: If the examining attorney accepts it as an answer, we will let it stand.

Mr. Haycraft: The examining attorney accepts the answer.

Mr. Weisman: Exception.

By Mr. Haycraft.

Q. What did you do yourself, personally, with respect to buying dresses for the Department 338 and 358 at the

time you became buyer for that department? A. I don't quite understand your question.

Mr. Haycraft: Read the question.
(The question was read.)

A. On my first trip to the dress market for Departments 338 and 358, I found that we were red carded, so there wasn't very much that I could do.

Q. Where did you go? A. To New York.

Q. Upon whom did you call? A. I called upon two manufacturers, Lyttle Brothers and International Dress.

Q. Whom did you call on at Lyttle Brothers? A. I don't remember the man's name. He was the salesman 4784
representing that firm.

Q. What were you told? A. I was told that Strawbridge & Clothier were red carded and that they could not show or ship me any merchandise.

Q. Was any explanation given further than that? A. I didn't ask for any explanations. I left.

Q. Upon whom did you call at the International Dress? A. I called upon a salesman and was introduced to the owner of the business who told me the same as I was told at Lyttle Brothers.

Q. Did you make any further attempt to buy dresses from the Guild manufacturers? A. I did not.

Q. Did you ascertain at that time the percentage of stock in that department, in those two departments, that consisted of Guild merchandise? A. I did. 4785

Q. What percentage was it? A. Sixty per cent.

Q. Do you know what price range was included in that 60 per cent.? A. The price range that we estimated that figure on was $10.75 cost market.

Q. What did you do when you found that you could not get merchandise from Guild manufacturers? A. I tried to buy merchandise elsewhere.

Q. Where did you go? A. To other dress manufacturers who didn't belong to the Guild.

Q. Located where? A. New York City and in Chicago.

Q. Can you testify now as to the names of some of the leading manufacturers that you called upon in that connection for that purpose? A (A short pause.) Yes, I can.

Q. Will you name some of the leading manufacturers? A. Bettini Frocks.

Q. How did you spell that? A. B-e-t-t-i-n-i.

Q. Are they located in New York City? A. Bettini is located in Philadelphia.

Q. Philadelphia? A. That is about the only one that
4787 I recall at this time.

Q. Do you recall when you went to Chicago whom you called upon there? A. I recall any number of people. I really can't recall all of their names. It was my first trip to Chicago and I was new in that market. I knew nothing about it.

Q. Were you able to replace the merchandise that you had been buying from—that your department had been buying from the Guild manufacturers? A. Not in Department 338.

Q. But you were able to do it in Department 358, is that it? A. We succeeded in doing a much better job in Department 358 in replacing that merchandise than we did in the women's department.

Q. Why were you not able to replace it so successfully,
4788 the Guild merchandise, in Department 338? A. Most of the larger manufacturers of women's dresses at that time were Guild members.

Q. That is, in the $10.75? A. In the $10.75 women's market.

Q. How did you ascertain that to be a fact? A. Through our New York office.

Q. Who is your New York office? A. The A.M.C.

Q. The A.M.C.? A. Yes.

Q. Mr. Bergdahl? A. Yes, sir.

Q. Did he assist you in trying to locate a new source of supply? A. No, sir.

Q. He did not? A. No, he didn't.

Q. When you say you ascertained through the New York office, what do you mean? A. I—we have buyers in New York who are shopping the markets continually and giving that information to buyers as they come into that market. I got my information from them.

Mr. Haycraft: That is all except for the information that I requested, and I should like to have the privilege of recalling the witness and examining him on those. 4790

Mr. Weisman: On what?

Mr. Haycraft: On the matter that I asked him to produce. I thought that it would be available, but apparently it was not.

Cross-examination by Mr. Weisman.

Q. Who were the buyers that told you that most of the larger houses were members of the Guild? A. They were the A.M.C. buyers in New York City.

Q. Well, they weren't your buyers at all, then, were they? A. They are scouts in the New York market.

Q. No. You said your buyers told you that the larger houses were all members of the Guild. Now, I asked you who they were. You said they were A.M.C. buyers. A. That is right. 4791

Q. So they weren't your buyers at all? A. We belong to the A.M.C.

Q. What do you understand by that? That they buy for you? A. They buy some things for us, yes.

Q. Under what circumstances does the A.M.C. buy for you? A. If we are not able to be in the market and we have to have something in a hurry, we use the telephone.

Q. Do you ever pool your orders with other stores who are members of the A.M.C.? A. No, sir.

Q. And buy in that fashion? A. No, sir.

Q. Now, before you went into the New York market you were buying for the Economy Department, weren't you? A. That is right.

Q. The Economy Department is a much cheaper department? A. Yes, sir.

Q. How much cheaper? A. We sold dresses in the Economy Shop from $2.95 retail to $9.95, and in the 338 and 358 departments we usually started at $10.75 retail and went to $16.75 retail.

4793 Q. You had been there for three years? A. Practically three years.

Q. During these three years your buying had been confined to merchandise of that price? A. That is right.

Q. So as a result of that you, personally, didn't know very much about the sources of supply that were available for 338 and 358 departments. You were new at it; isn't that so? A. That is right.

Q. As a matter of fact, when Mr. Haycraft just asked you to give some of the names, by reason of your newness in it, you couldn't remember even the people that you do business with now, could you? A. That is right.

Q. So when you say you couldn't replace them, you really couldn't replace them because you didn't know who to go to because of your lack of experience in that price
4794 range; isn't that so? A. Not wholly, no.

Q. Well, let's see. Did you ever hear of Ace Dance Modes? A. No, sir.

Q. Don't you know they are a $10.75 house? A. I didn't know that, no.

Q. Do you know it now? A. Yes.

Q. When did you first learn it? A. Now.

Q. Just now. Did you ever hear of Ace High Dresses? A. No, sir.

Q. Didn't you know that they were a $10.75 house? A. I did not.

Q. Did you ever hear of Louie Adler Dress, Inc.? A. I have heard of Louie Adler, yes.

Q. Did you go to him? A. No, sir.

Q. Why didn't you go to him? You heard about him. A. I didn't know what prices he made.

Q. Couldn't you have easily learned by having recourse to one of the directories that are commonly issued in the business? You have seen these directories, haven't you? A. That is right.

Q. You have seen one like I hold in my hand from which I am reading and which is Respondents' Exhibit 22, haven't you? A. No, sir. 4796

Q. What? A. No, sir.

Q. You have never seen one like that? A. No.

Q. Have you seen one like Fairchilds? A. That is right.

Q. Like this one (indicating)? A. That is right.

Q. Respondents' Exhibit 21.

Mr. Haycraft: For identification.

By Mr. Weisman.

Q. Did you ever hear of A & B Dress Company?

Mr. Haycraft: Object to the reading of the exhibit not in evidence.

Mr. Weisman: I am asking if he has ever heard of these. 4797

Mr. Haycraft: You said you were reading a moment ago on the record.

Examiner Bennett: He can ask those questions regardless of the source.

Mr. Weisman: Yes.

Examiner Bennett: I don't want you to read in those names on the authority of those particular documents.

By Mr. Weisman.

Q. Did you ever hear of the A. & B. Dress Company, Inc.? A. No.

Q. Did you know that they sold dresses at $10.75? A. I did not.

Q. Did you ever hear of the Aywon Dress Company? A. Yes, sir.

Q. Did you know they sold dresses at $10.75? A. Not to Strawbridge & Clothier.

Q. Why didn't they sell to Strawbridge & Clothier? A. They were a Guild house.

Q. Did you ever hear of the Barhan Dress Corpora-
4799 tion? A. I did.

Q. Do you know that they sold dresses at $10.75? A. Yes, sir.

Q. Did you go to them? A. They were also a Guild at that time.

Q. Are you sure of that? A. I am sure, yes.

Q. How did you become sure of that? Did they have the kind of merchandise you wanted? A. They did.

Q. You say you couldn't get it because they were a Guild house? A. That is right.

Q. And that was the only reason you couldn't get it? A. That is right.

Q. You haven't made a mistake about that; have you? A. I don't think so.

4800 Q. You are certain that they had the kind of merchandise that you wanted? A. I think so.

Q. You saw it? A. I didn't see it, no.

Q. Someone told you? A. That is right.

Q. Did you try to get the merchandise there? A. No, I didn't.

Q. Why? A. I told you before they were a Guild house.

Q. I am going to tell you now you are mistaken. What do you say then?

Mr. Haycraft: What is the name of the firm?
Mr. Weisman: Barhan Dress Corporation.
Mr. Haycraft: How do you spell it?
Mr. Weisman: B-a-r-h-a-n.

By Mr. Weisman.

Q. Now, what do you say? A. I was mistaken.

Q. So there, at least, was a source that you could have gotten dresses from? A. Yes, sir.

Q. What about the Belldane Dress Company? A. Never heard of it.

Q. So that you couldn't know that they sold dresses at 266 West 37th Street, at $10.75? A. No, sir. 4802

Q. What about Bellsky & Shaddock? A. I never heard of those—that place.

Q. You mentioned in your direct testimony that you bought dresses from Bettini Frocks? A. That is right.

Q. Did you find that they had the kind of dresses that you wanted? A. We had always used Bettini.

Q. I am asking you. So they carried what you wanted? A. That is right.

Q. So you continued to buy from them? A. That is right.

Q. What you required. I understood you to say that Bettini Frocks was located in Philadelphia. A. That is right.

Q. Did you visit them in the New York market? A. I do. 4803

Q. Don't you know they have a place at Seventh Avenue? A. Yes, sir. The factories are in Philadelphia.

Q. You don't buy in the factories; do you? A. Sometimes.

Q. What do you do generally? A. Showrooms.

Q. Where are the showrooms? A. 525 Seventh Avenue.

Q. Where do you buy generally? A. Here in Philadelphia.

Q. Didn't you just say you generally buy in their showrooms? A. I said not in Bettini's showrooms, in other manufacturers' showrooms.

Q. In Bettini you buy at the factory? A. That is right.

Q. You have always done that? A. Eight times out of ten I go to the factory.

Q. How often do you go? A. Once a week.

Q. You go to their factory? A. Yes, sir.

Q. What price of merchandise did they make? A. $10.75 cost.

Q. How much do you buy from them? What is your average order?

4805 Mr. Haycraft: That is objected to.

A. That is a hard question to answer. It depends on the season, it depends on how many styles the man has.

Q. Did you ever hear of the Giltwell Dress & Costume Corporation? A. No.

Q. So you wouldn't know that they sell dresses in New York City at $10.75 wholesale? A. No.

Q. Did you ever hear of Berke, Press & Berke, Inc.? A. No, sir.

Q. Did you ever hear of the Blackwear Dress Company, Inc.? A. Yes, sir.

Q. Did you buy any dresses from them? A. I do.

Q. How long have you been buying dresses from them?

4806 A. Since January, 1936.

Q. And at what price? A. Different prices.

Q. What different prices? A. $8.75 to $10.75 wholesale.

Q. Where are they located? A. I am not sure.

Q. New York? A. New York.

Q. What about Samuel Bloom & Company? A. Is that New York?

Q. New York. A. I use their merchandise.

Q. What kind of merchandise do they make? A. Women's dresses.

Q. What price? A. $10.75.

Q. What department do you use them in? A. 338.

Q. 338? A. Yes.

Q. Is that a Guild house? A. No.

Q. No? A. No.

Q. How about their merchandise, is it good or bad? A. All right.

Q. All right? A. Yes.

Q. How does it compare with Guild merchandise? A. It compares favorably.

Mr. Freeman: Stop.

Mr. Weisman: I object to that. Counsel has just said in a loud voice "stop." Will the Court 4808
instruct Mr. Freeman to both restrain his voice and his actions because he not only yelled but he shoved his arm high in a fling that has annoyed me greatly.

Examiner Bennett: Of course, that should not be done.

By Mr. Weisman.

Q. What about the Bon-Ray Dance Frocks? A. I do not know them.

Q. Do you know that they sell dresses at $10.73? A. No.

Q. What about Boudon & Tuman, Inc.? A. (There was no answer.)

Q. Do you know them? A. Yes. 4809

Q. Do you do business with them? A. Yes.

Mr. Haycraft: I wish to interpose an objection at this time because I can readily see where this is going to lead.

Examiner Bennett: Yes.

Mr. Haycraft: It will be seen that as a result of the questions that are now being propounded as to how much business is done, and so forth, and

where they do business, and how much business, that by the present cross-examination the present source of supply of Strawbridge & Clothier's merchandise, which they cannot get from the Guild, will be disclosed.

Mr. Weisman: What of it? Certainly no possible injury can come to them if they are doing it in an honest way. The only reason that I can see for concealment would be that there is something surreptitious about it and sinister in a way which has not made itself known to us.

Mr. Haycraft: No such thing. I say that is an
4811 obvious truth, Mr. Examiner, that is——

Examiner Bennett: That will take out of the record, of course, his answers to your question as to the sources of supply. Obviously, if you may ask him questions on your direct examination as to his sources of supply counsel for the respondent would be entitled in all fairness, it seems to the Examiner, to inquire into that situation in the present manner.

Mr. Haycraft: I have no objection to asking whether he knows these people, but I do think he should be allowed to the amount of business that is being done with them.

Examiner Bennett: The amount of merchandise purchased and the price paid?

4812 Mr. Haycraft: That is it.

Examiner Bennett: I certainly shall permit cross-examination along this line, in view of the matter having been opened very fully by asking this witness as to his sources of supply on direct examination, and he has testified, on direct examination, as to his sources of supply. How else, Mr. Haycraft, do you think the respondent could make a proper defense to that?

Mr. Hayeraft: I did not quite get your Honor's statement. I did not quite get the import of your Honor's statement.

Examiner Bennett: Make your objections if he goes into detail on that proposition.

Mr. Hayeraft: The pending question was whether they did business with them or not.

Examiner Bennett: It is my understanding that that question was answered.

Mr. Weisman: It was, your Honor.

Mr. Hayeraft: I would like to have it read.

(Question and answer read.)

Examiner Bennett: I am going to overrule the objection to that unless you want the whole testimony in that regard to go out of the record. 4814

Mr. Weisman: Mr. Examiner, with the greatest respect, let me make this statement to you——

Mr. Hayeraft: Mr. Freeman wants to make a statement and I think he had the floor.

Mr. Weisman: Go ahead.

Mr. Freeman: Now, your Honor, with the very greatest respect——

Mr. Weisman: Will you not speak so we can all hear you?

Mr. Freeman: I do not want to shout.

Mr. Weisman: Please do not.

Mr. Freeman: I certainly will not.

Mr. Weisman: But I want to hear you. 4815

Mr. Freeman: Mr. Examiner, with the greatest respect, I will instruct this witness not to answer the particular question as last asked as to whether he is doing business with these particular houses.

Examiner Bennett: Do you persist in your refusal to answer the question?

The Witness: I do.

By Mr. Weisman.

Q. Just so we are sure about this, I am going to ask you, too: Do you persist, Mr. Witness, in your refusal to answer that question? A. I do.

Mr. Weisman: I now move that all of the testimony of this witness be stricken, not only legally but physically from the record. I ask that this be done, and I make this motion that it be stricken in view of the extraordinary situation that had developed here when the witness on cross-examination is advised by his attorney not to answer, and does
4817 persistently refuse to answer a perfectly competent and proper question. I submit that the least that should be done is that an orderly procedure requires that all of his testimony be stricken out, otherwise courts of law have become a mockery, and a mere shadow, of substance, and the procedure has become a mere farce if, by this attorney's direction to this witness, he is directed to, and he says he does refuse to answer the question, notwithstanding the direction of the Court. I further desire to call the Examiner's attention to the contumacious conduct of this lawyer, and his entire disregard for all of the dignity, respect and honor due this tribunal in the very face of your Honor's ruling directing the witness to arbitrarily,
4818 persistently, wilfully, and for no reason shown, answer the question. You will observe that counsel's direction to the witness contained not even any reason why he should not answer it but simply said, "I will instruct this witness not to answer questions of the kind last asked as to whether Strawbridge & Clothier were doing business with this particular house or houses.

Mr. Haycraft: I think that the rights of the witness and his firm may well be protected if there is a compromise on this question by counsel for the respondent asking him whether or not he knew these firms and whether or not he could get a supply of goods from them without disclosing whether or not he actually did business with them.

Mr. Weisman: I certainly would object to that——

Mr. Haycraft: I had not finished.

Mr. Weisman: Oh, I beg your pardon. By all means proceed.

Mr. Haycraft: —without disclosing the fact that 4820
they are a source of supply and the amount of business done and the price paid and the nature of the goods bought. In other words, if I understand the purpose of this examination, it is to show that there were available sources of supply other than the Guild. Now, that being the purpose of the cross-examination, will not that be served by showing the various sources of supply which the witness recognizes as being sources of supply where he can obtain a supply of goods without disclosing the fact that he did buy, or the amount he did buy, and the price he paid?

Mr. Weisman: Mr. Examiner, first let me say to you that this is a most extraordinary procedure 4821
than during my entire legal career before the Bar I have ever witnessed. It is perfectly obvious to your Honor that Mr. Freeman is now usurping entirely the position of Government's counsel in this case and taking the entire matter into his own hands, as a duly qualified representative of Strawbridge & Clothier. Here is a witness who takes the stand, a witness tendered by the Commission, and,

as a matter of fact, by Strawbridge & Clothier, who testifies that his sources of supply were injured and were shut off; he says that 60 per cent. of the merchandise they had in the business in those departments came from Guild houses. Now, when I seek to examine this witness and show, by examining him on this very important issue, a witness who has been tendered by the Commission, Commission's attorneys says to your Honor in this case and says to me as follows: "Oh, no. I will not let him testify to that. I will permit him to testify only in a very limited way. I will not let him tes-
4823 tify to what counsel for the respondent deems to be highly material and relevant testimony." He further says, "For that purpose if you want to ask him any question which will tend to rebut, weaken, and thoroughly break down his testimony upon that, you cannot do it in any way." I submit it would be highly improper for me to be limited in that manner. I ask that your Honor permit me to go into that. Your Honor will recall that I have done it very carefully. Your Honor will recall, and your Honor knows, that it is being done by me in the performance of my duty. If these people do not want to testify to this thing they should not have been tendered; this witness should not have been tendered in the first place. They should have
4824 been subpoenaed and then the witness under subpoena could have been called upon to answer the question or not. I submit this practice is highly improper, entirely oppressive, and that I am prohibited from the fair protection of my clients' rights in the premises, and it virtually deprives us of a hearing.

Obviously, for counsel for the Commission to put a witness on the witness stand and to be permitted

freely to adduce any evidence he desires from that witness, and yet to have my cross-examination of that witness restricted by what counsel for the Commission may conceive to be a proper scope of cross-examination, I might as well turn my cross-examination over to counsel for the Commission to conduct. The course of conduct of counsel for the Commission in this case has been characterized in this manner to a more or less degree in the past, but this certainly reaches the very height of injustice, star-chamber proceedings, or a drumhead court-martial. Certainly, justice has flown out of the window, and the personal desires and aspirations of Strawbridge & Clothier have taken its place too thinly disguised, most happily, to fail to be recognized by any person with common sense. 4826

Examiner Bennett: I will ask you to hear what the attorney for the Commission has to say about the available source of supply. What further knowledge or what better position are you in after you find out whether this particular witness had anything to do with, or had, in fact, availed himself of those sources of supply if they existed? What position are you in then? What better position?

Mr. Weisman: I will tell you what better situation I am in, and I hope to show that not alone did they have these sources, but that they could avail themselves of them and use them, and that they did; furthermore, the charge here has been made that they could not obtain merchandise of a similar quality or character. This witness has just testified on that very important point in answer to my question that the merchandise was comparable. I am quite sure that your Honor will see the great importance of that in an inquiry of this kind. Not 4827

only is it necessary to show that they did have other sources of supply, but that those sources of supply were competent to furnish merchandise of the same quality, styling, and so forth, and how better can that be shown than the fact that they did, in truth and in fact, purchase their goods from them, and that they know, by that purchase, receipt and sale of such merchandise, what that merchandise was as to those very important respects about which they have cried in great assumed agony here for over a week. Now, to attempt to shut me off is to attempt to defeat my inquiry, now that we have
4829 gotten to people who are able to testify to something, that I sought to develop in regard to these other witnesses. Your Honor will recall that we started out in this case with Mr. Tily, the head of this firm, and went down gradually to these buyers, and that every time I would ask them a question about these various matters, they would say, "Oh, the buyers can tell you all about that, they are the people who actually did the business." Therefore, your Honor will recall, upon that representation made to you by counsel, and by the witnesses, that I was stopped in my examination of these officers of the corporation. I endeavored to examine them upon matters of the greatest importance to my clients in this case. These things are vital to us,
4830 and they cannot be ignored. Beginning with the testimony which was taken here last Friday, we have built up on the premises all of the testimony of every witness that has come in here, that the buyers, the people who actually transacted the business, would come in here and testify to the actual facts, about which we had speculation, opinions, reports from subordinates, all of which trickled down to the buyers as the people who

really knew something about it. Theirs is the substructure, the foundation upon which all of the testimony of these other witnesses has been built. Now, if I am denied the opportuntiy to see whether that foundation is rotten or strong, true or false, broad or narrow, long or short, where am I? It means that I am precluded as to each and every witness that has appeared on this witness stand in the City of Philadelphia. I want to further state that if I am not permitted to examine these witnesses fully and freely, that I feel that I am properly entitled to an affirmative ruling upon a motion to strike from the record all of the testimony that 4832
has heretofore been adduced in Philadelphia during the course of these proceedings.

Furthermore, it is perfectly obvious that if I have the opportunity of showing that as to each of these sources of supply they were able to buy merchandise at the same price, merchandise of comparable value and nature and styling and type and material and fabric and delivery, discounts, and all of that sort of thing which enter into this very important matter, and that they not only knew of these things but availed themselves of it, my position is incomparably improved.

Examiner Bennett: That would go without saying that they would try to look for other sources of supply. Off the record. 4833

(There was a discussion off the record.)

Examiner Bennett: The Examiner has tried, off of the record, to arrive at a basis by which the inqury might proceed without foreclosing the rights of the respondents in this case which I recognize as very important and still not shut off the Commission's inquiry as to the result of certain actions of this respondent. He suggests that after re-

spondents have developed the sufficiency of resources which, in fact, were available to this merchant, that it is not necessary to go further and to determine that this merchant actually made use of these resources.

And, the Examiner has decided that he will stop the question at that point on the theory that otherwise witnesses cannot be secured who will develop the inquiry; that will develop all of the facts of the inquiry because of the fear that their declarations of their sources of supply may lead to embarrassment.

4835 Is that clear to you now? That is my position.

Mr. Weisman: Yes, your Honor, it is.

Examiner Bennett: I will also say this for the record, that I am doubtful, it is a close legal question, and I am doubtful as to what the decision ought to be from a strict legal standpoint and, of course, that places the burden squarely and fairly and directly upon the attorney for the Commission to uphold the legality of it, and it gives the respondent an opportunity to overthrow the whole proceeding on that particular question.

Mr. Weisman: May I state to your Honor that in a case of this type, in addition to the points which I have already made, I deem it of the greatest of importance to my client that my client be

4836 in a position to show, where, as here, the availability of sufficiently similar merchandise is gained, to show that no loss was sustained, and to show that not alone was such merchandise available, but the available sources were, in fact, availed of.

I deem it greater than any argument that I can make on the question of availability and nature, size and scope and quality of such sources, the fact that the sources were used.

And I, therefore, say that to preclude us from proving through these very witnesses who say that the sources were not available, that they did, in fact and in truth, avail themselves of such other sources, is to deny us a vital, fundamental right in the premises, the denial of which constitutes an insuperable barrier to our proper presentation of a defense in this case which we cannot hope to overcome.

I want to also say that I appreciate and humbly acknowledge the fair and frank statement of your Honor with regard to this matter and if I could, in any justice to my client's position and interest, 4838
meet the thought of your Honor, on behalf of my client I would do so. However, I cannot, and I respectfully except.

Examiner Bennett: We will take an adjournment until 9 o'clock, Eastern Standard Time, to-morrow morning, Friday. At that time the proceeding will be resumed in this room at this place.

Mr. Weisman: May I also say this for the record?

Examiner Bennett: Yes. The record will be reopened for that purpose.

(The record was reopened and the following proceedings were had:)

Mr. Weisman: As an officer of the court and as a lawyer at the bar, and with a knowledge of this situation, it is in my opinion, and I say to this 4839
honorable body that it is utterly incomprehensible that there should be any good and valid reason why the sources of their supply and the fact of their being supplied therefrom, and the details therefor, should be kept secret.

If there is some sinister, subversive, and shadowy reason why that should not be done, it should be dragged out into broad daylight and inspected in the full light of the sun.

Our position is such that we are not interested in that to the slightest degree. Nor do we have any power or control over it to the slightest degree.

We, as a matter of fact, even with our own members, do not care whether they buy from anybody in the world. Our own members have no desire or wishes in that regard.

There is nothing in this case, so far as the Fashion Originators Guild of America, Inc., the respondent herein, is concerned, which says they must buy or they must not buy from anybody else.

In an affirmative way we only say that we will
4841 not sell if you deal in copies of our merchandise. This is a very simple, clean-cut matter and one which does not entail a judgment or determination of this sort.

This is not a case where one merchant seeks to take the business of another merchant and for that reason we want to know with whom they are doing business in order that we may rush around and steal that business. As a matter of fact, we have refused to do business with Strawbridge & Clothier because we did not want to do business with them until such time as they will aid us to keep and protect our property rights, which are our style originations.

This is not a case where one merchant wants to
4842 go out and take the business of another. We do not do any business with Strawbridge & Clothier. We do not want their business.

Mr. Haycraft: I want to make one point and that is this: The red carding of Strawbridge & Clothier was caused by the refusal of Strawbridge & Clothier to disclose the name of a manufacturer who was alleged to have copied merchandise manufactured by members of the Guild.

That is one of the points raised. They wanted to know that information and when it was denied them they refused to continue with Strawbridge & Clothier.

Examiner Bennett: I see.

Mr. Haycraft: Of course, they want to know these people with whom Strawbridge & Clothier is doing business.

Examiner Bennett: Just a moment. I realize all of that and I am inclined to think personally that the merchant is unduly disturbed, but that is a matter for the merchant to decide.

Of course, if I had decided differently from that 4844
which I have decided, I would have called upon the witness to answer.

That is the present situation.

Mr. Weisman: I would like to ask the reporter if I have taken an exception, a formal exception on the record, to the ruling of the Examiner in denying to me the right to interrogate the witness in this regard?

Examiner Bennett: You may have an exception to the ruling. I do not expect you to take my ruling. I expect you to make such objection as you see fit.

We now stand adjourned, gentlemen.

(Whereupon, at 4.35 o'clock P. M., August 6, 4845
1936, the hearing in the above-entitled matter was adjourned.)